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ABSTRACT

This material is produced to provide a program to instruct secondary level students in the political, governmental, and legal processes and to encourage active student participation in these processes. A unique feature of the program is the role of the community as a base for practical learning. Part of a year-long curriculum program, this unit examines civil rights in relation to fair trail and free press. The unit examines the court system, criminal procedures, and the basic foundations of law. Students examine case studies and analyze the decision rendered. Students are expected to formulate their own law, evaluate its precision, jurisdiction, limits of enforcement, and possible alternatives. Learning activities include mock trials, simulation, role playing, field study, problem solving, issue analysis, and research. Chapter one presents the teaching strategies for law-focused education. Chapter two provides several noteworthy opinions designed to stimulate students to weigh the pros and cons of the issue of fair trail v. free press. The third chapter includes three actual murder cases which received some of the most intense publicity in the twentieth century. The fourth chapter provides extensive field study and active student participation relevant to court decisions. A legal glossary and bibliography conclude the document. (Author/JR)

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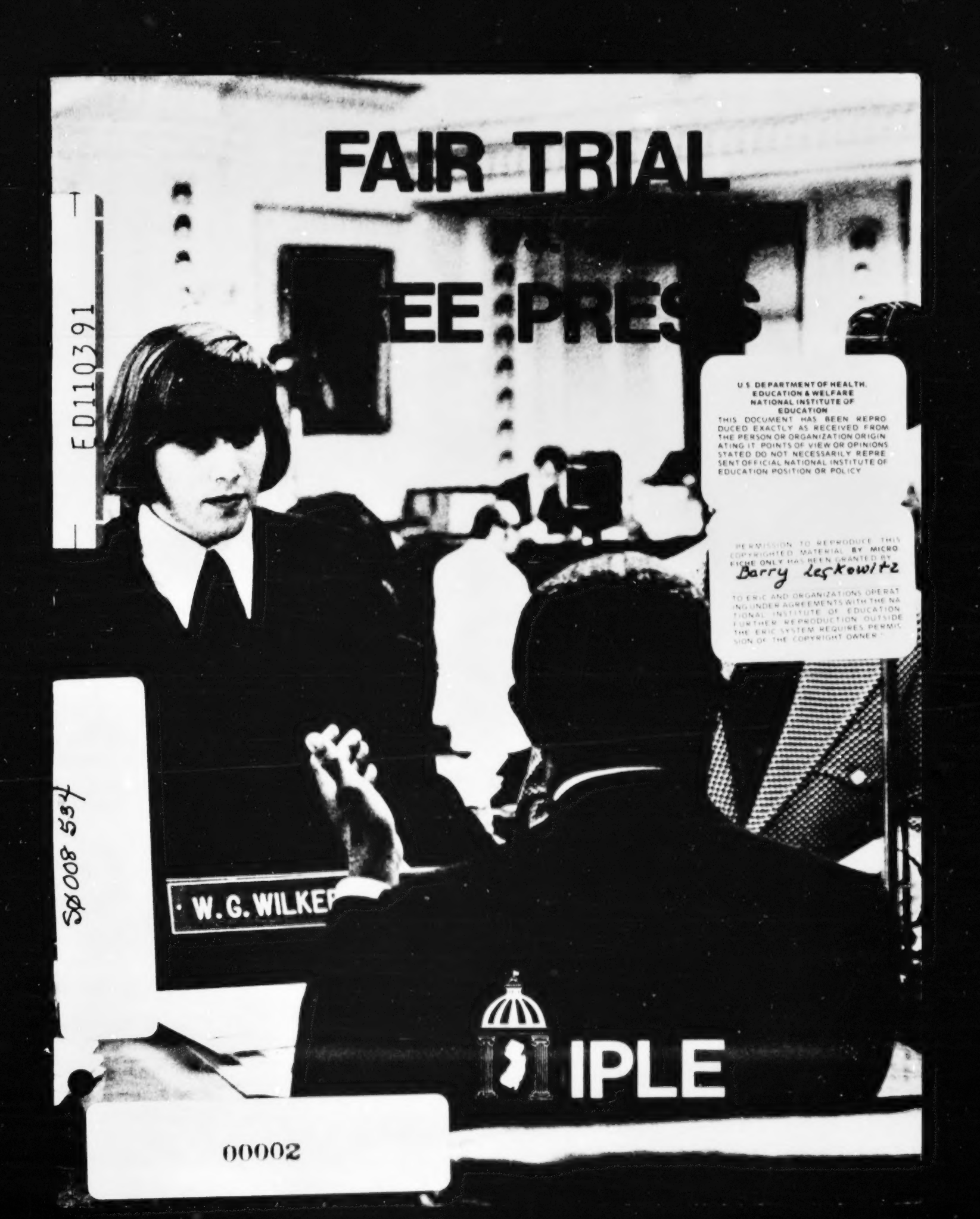

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INSTITUTE FOR POLITICAL AND LEGAL EDUCATION

FAIR TRIAL v. FREE PRESS

A RESOURCE MANUAL FOR TEACHERS AND STUDENTS

Developed and Prepared by

Todd Clark
National Education Director
Constitutional Rights Foundation

Richard Weintraub
Constitutional Rights Foundation

Barry E. Lefkowitz
Director
Institute for Political and Legal Education

March 1975

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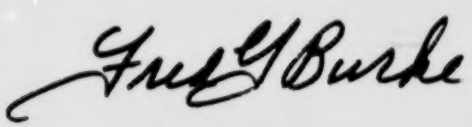
On behalf of the Department of Education, State of New Jersey, I wish to bring the Institute for Political and Legal Education to the attention of educators throughout the nation. The program has made a significant contribution to the education of high school students about the American political, governmental, and legal process and thus should be of interest to educators, parents, and students.



Dr. Fred G. Burke
Commissioner of Education
State of New Jersey

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The Institute for Political and Legal Education was developed through the cooperative efforts of the Institute staff, educators in local New Jersey districts, and the staff of the Office of Program Development, Division of Research, Planning, and Evaluation/Field Services, the Department of Education, State of New Jersey. The political and legal materials were developed between 1971 and 1974 with funding from Elementary and Secondary Education Act, Title III.

In 1974, the political education program was validated as successful, cost-effective, and exportable by the standards and guidelines of the United States Office of Education. As a result the program is now funded through ESEA, Title III as a demonstration site to provide dissemination materials and services to interested educators.

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Dorothy J. Donovan, *Administrative Assistant*
John F. Khanlian, *Assistant to Director*
Katherine L. Wallin, *Associate Assistant*

EDUCATIONAL IMPROVEMENT CENTER STAFF – LEA

Paul Winkler, *Executive Director*

Project Address

Institute for Political and Legal Education
P.O. Box 426
Glassboro-Woodbury Road
Pitman, New Jersey 08071
(609) 589-3410

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THE MEDIA

The theory of a free press is that the truth will emerge from free reporting and free discussion, not that it will be presented perfectly and instantly in any one account. . .A free press is not a privilege but an organic necessity in a great society.

— Walter Lippmann

If it happened, the people are entitled to know. There is no condition that can be imposed on that dictum without placing between the people and the truth a barrier of censorship. . .

— Walter Cronkite

In making their selection, newsmen also apply values, most of which are professional. . .and a few of which are personal. Newsmen prefer stories that report people rather than social processes.

— Herbert J. Gaus

The news as presented in both broadcast and newsprint does tend to give a startling, not a balanced, presentation of the day's events, as James Preston has put it, The television camera or the newspaper headline focuses, like a flashlight beam in the darkness, at what has just moved. All else is lost in the limbo.

— Eric Sevareid

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PREFACE

A new constituency has been created in America following ratification of the 26th Amendment to the United States Constitution which lowers the voting age to eighteen.

Surveys across the nation of students approaching the age of eighteen have revealed similar and disappointing results. The majority of high school students do not know their local, state, or federal representatives; do not know how to register to vote; do not understand the Bill of Rights; and express disillusionment and frustration with the system.

There is an obvious need for an awareness and understanding of the political, governmental, and legal process. The logical approach for correcting the situation is education within the school system.

The function of the Institute for Political and Legal Educations(IPLE) is to provide a program to instruct secondary level students in the political, governmental, and legal process. Through IPLE, students demonstrate a significant positive increase in their knowledge and reveal an inclination to participate actively in the political process and law-related fields.

A unique feature of the program lies in the view of the total community as a classroom since it attempts to utilize all resources in the community and State as a real and practical base for learning. Students are out of school approximately thirty-five days per school year, involved in field study and interning. Working in the community provides students, through experiential learning, an opportunity to apply the skills acquired in the classroom. This can be accomplished at the local, county, and/or state levels.

Through surveys, problem solving, issue analysis, research, simulations, field study, and interning, students eventually possess the ability to initiate projects which affect their community in a positive manner.

The year-long curriculum is subdivided into three areas of concentration, alterable by the interests and selections of the students and teacher. An integrated combination of innovative informational and instructional manuals is utilized within each unit of study, along with simulation gamings, surveys, projects, audio/visual materials, and appropriate interning. In addition, individual classroom, regional, and state-wide training conducted by professional experts provides participants with an active overview of the unit.

The *Voter Education* unit includes the process of issue analysis, canvassing, and registration with insights into media publicity/propaganda techniques, and election strategies. Voting reform, rights and procedures, party structure, and the electoral college are examined intensively. An optional political assembly and simulated election are highlighted with historical review, candidate speakers, and local party campaigning. Activities which are encouraged during the unit include voter registration drive in and out of school; campaigning for actual candidates (working in campaign headquarters, telephone canvassing, door-to-door canvassing); working as challengers at an election; organizing transportation and/or babysitting for election; and conducting survey polls for election in and out of school.

The *State Government* unit examines the structure and function of the state, county, and local levels intertwined with previous unit issues such as environment, housing, and transportation. Included are policy formation, lobbying, media techniques, sociological surveying, and value orientation. Simulation gaming is

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used for the purpose of revealing to the student the decision-making process of governmental bodies. In addition, students learn the operation of intergovernmental communication and are provided with a practical knowledge of labor-management relations. Student awareness of the passage of laws not only is experienced in out-of-school interning at the State Legislature and/or a professional lobbyist's office but also is simulated at a three-day Model Congress.

The *Individual Rights: Freedom of Expression -- Fair Trial v. Free Press* unit concentrates on the freedom of speech (including expression) and fair trial v. free press as intricate parts in the study of the court system, criminal procedures, and the basic foundations of law. Case studies are presented, e.g., *Roth v. United States, New York Times v. Sullivan,* whereby students analyze the decision rendered. Students are expected to formulate their own law, evaluate its precision, jurisdiction, limits of enforcement, and possible alternatives. Included is the *Mock Trial: Tinker v. Des Moines*, a simulation activity where students assume roles of individuals associated with the freedom of expression case. Students learn, through role playing, the process of a District Court evidentiary hearing and a Supreme Court session. Field study or interning might include the Bar Association or the Public Defender's Office.

Activities and projects throughout the curriculum have been designed to provide students at lower, middle, and upper ranges of ability the opportunity to overcome challenges at their appropriate level. In this way, more flexibility is afforded to the teacher in selecting curriculum options.

The key to IPLE's popularity with students, teachers, administrators, and community leaders is its foundation in the real world of political action. Students do not watch an election from the sidelines – they are a part of it! They do not memorize the names of Supreme Court justices – they actually see the court system in action!

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FOREWORD

JUDICIARY AND THE PRESS

by Todd Clark
National Education Director
Constitutional Rights Foundation

The continuing conflict between the press and the judiciary represents a very difficult problem because of the competing interests of press freedom with the right of the government to bring criminals to trial and the right of individuals to a fair trial. These issues involve the concept of confidentiality of news sources and the Constitutional guarantee of a public trial by an impartial jury.

The case of Los Angeles Times reporter William Farr neatly combines the issues. While covering the Charles Manson murder trial for the Los Angeles Herald-Examiner, Farr sought out and obtained, from three of the six attorneys, copies of an interrogation statement made by one of the defendants. In the statement the defendant admitted that the "Manson Family" had plans for even more ghastly murders. Farr wrote a story which was printed in his paper. Before the story appeared, Farr told the judge about it so that the jury could be sequestered and not have an opportunity to see the article while the trial was in progress. At the time, both Farr and the judge, Charles Older, believed Farr was not compelled to tell the judge who had given him the transcript under the terms of a California law. Much later, Judge Older changed his mind and held Farr in contempt of court for refusing to reveal his sources. Farr was jailed for 46 days and is only out of jail now while his case is pending in a higher court. The officers of the court, in this case the attorneys, had behaved in an unethical way by giving Farr the transcript. They were subject to disciplinary action by the judge. By denying responsibility some of them further compounded the seriousness of the issue by perjuring themselves. Farr, by protecting his sources, lived up to his promise to them. The judge was concerned that the incident could be viewed by a higher court as a denial to the defendants of their right to a fair trial. The possibility of such a ruling threatened the entire lengthy proceedings and could have destroyed that state's case against the defendants.

The courts have become increasingly concerned over the conflict between the right of a free press to investigate and report on criminal activity and the right of a defendant to a fair trial. Judge Older's concern over Bill Farr's article was based on his fear that a conviction could be reversed if it was shown that the jury had seen the article. It has become especially important in celebrated criminal cases for care to be taken to assure that a jury can be found which has not already decided guilt or innocence based on pre-trial publicity in the media. Three landmark cases: *Sheppard* vs. *Maxwell*, *Estes* vs. *Texas*, and *Rideau* vs. *Louisiana*, each dealing with different aspects of publicity, established clearly that a defendant's right to a fair trial called for scrupulous protection by the courts.

For the past six years, since the recommendations of the Reardon Report to the American Bar Association and the issuance of *Fair Trial Free Press*, the guidlines of the American Newspaper Publishers Association, efforts have been made by the media and the judiciary to work out procedures acceptable to both groups. Courts continue to issue gag orders forbidding publicity regarding trials which the press believes go beyond reasonable limits and interfere with their constitutional freedom. Some gag orders have been so broadly

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written that newspapers have succeeded, on appeal, in winning reversals. Usually it has been necessary for papers to print articles, to be found in contempt of court and to appeal the contempt citation. For them to appeal the gag order itself while the trial was in progress would mean that they comply with a court order which the paper believes is unconstitutional.

In a number of cases, papers believe gag orders constitute a form of prior restraint, a variety of press control held unconstitutional years ago by the U.S. Supreme Court (see *Near vs. Minnesota,* 283 U.S. 697, 1931). Prior restraint is considered the ultimate censorship evil since it restricts the press before publication and in so doing denies the public access to information. The press is willing to accept responsibility for what it publishes but will continue to fight efforts to limit the right to publish.

There has been a rash of other incidents over the past several years involving newsmen called to testify before grand juries and judges where they were asked to reveal information and the names of informants which they claimed were confidential. Maintaining a First Amendment right to protect their sources, they have refused to testify. Three cases reached the Supreme Court in its 1972 term and the Court has ruled on them.

Are Limits Needed?

How important is a free press to the continued existence of a free society? What limitations should exist?

Basic arguments for limitations on press freedom can be persuasive. The press should not be free to print articles which threaten our National Security. But, who decides when such a threat exists? The press should not slant news to reflect only one side of important issues. But, who makes this subtle distinction? The press should not jeopardize the right of an individual to a fair trial. But, how can an acceptable line be drawn between no information and damaging information? The press should not be free to defame anyone maliciously. But, who determines the degree to which such public criticism goes beyond acceptable limits?

Each of these issues must now be settled by the courts. The competing interests must be weighed in the light of constitutional principles in each case. Of equal importance is the need to translate court decisions which attempt to manage these conflicts into positions which are understood by the average citizen. Certainly there is no freedom of greater importance to our society than the freedom of the press which makes it impossible for us to draw conclusions independently of the official position of our government and of our sources of media information.

Clark, Todd, ed. *Bill of Rights Newsletter*
28:7, Fall, 1973

INTRODUCTION

A FAIR TRIAL AND A FREE PRESS, CAN WE ALWAYS HAVE BOTH?

When you read the newspaper or watch news programs on T.V., what kinds of reports interest you the most? Murders, love triangles, the latest information on famous people or information on the state of the economy, world affairs, or politics? If you are like most people, you probably are attracted to news of crime and violence for the same reasons that have always made these themes popular as plots for movies and T.V. dramas. Often, it seems that the more grizzly the crime, the greater is the public's eagerness for news reports about the participants. Few crimes in the twentieth century have attracted as much attention as the kidnapping of Charles A. Lindbergh's infant son in the 1930's, the murder of Dr. Sam Sheppard's wife in the 1950's, and the murder of eight nurses by Richard Speck in the 1960's.

This manual, *Fair Trial vs. Free Press,* is the second part of the third unit of study in a year-long social studies curriculum. The first part of the unit is the manual *Individual Rights.* The material herein addresses those cases chosen not to emphasize spectacular crimes of violence but to focus on another important problem common to each – can a person accused of a spectacular act of violence receive a fair trial? It is general knowledge that such crimes receive enormous publicity in the news media.

While the Sixth Amendment to the Constitution guarantees a speedy and public trial, does the right of the public to know the circumstances of such cases make it possible for the accused to receive a fair trial? Since a jury trial is also a right guaranteed Americans accused of crimes, do you believe it would be possible to find jurors with open minds after newspapers and T.V. have given large amounts of time and space to such cases before they come to trial? As you read the materials that follow and participate in courtroom simulations, keep in mind the contradiction that exists in our Constitution. First we are guaranteed a free press, but we are also promised a fair trial if charged with a crime. Can we have both or must one right give way to the other as we try to find a balance which deals fairly with this problem?

Material is to be used by both the teachers and students. That material to be used by students appears on blue-tinted pages.

High school students, through the Institute for Political and Legal Education, will experience a curriculum designed for self-initiated investigations into legal questions. Students should note that this manual physically appears to be a random selection of unrelated page numbers; however, these pages correspond to a flexible teacher curriculum manual designed to meet student concerns.

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CHAPTER I

TEACHING STRATEGIES FOR LAW FOCUSED EDUCATION

The focus in social studies education today is on a conceptually organized, inquiry-oriented approach to learning. In this process students learn to define problems, formulate questions, classify information, draw inferences, identify alternatives, and so on. By so doing, they develop skills in analysis which, hopefully, will enable them to apply the content of their studies to a variety of new situations.

Central to this "inquiry method" is the use of directed discussions, in which students' views are questioned and challenged in an attempt to develop their thinking ability. (Straight expository lectures, while sometimes needed, should be limited to less than half a class period, or else interspersed with considerable discussion.) Questions should encourage students to express and justify various points of view. Discussions also facilitate students' "getting in touch" with their feelings on an issue. (In other words, how would they feel if they were the person or persons involved in a particular situation?)

In studying legal issues such as those involved in freedom of press, there are often no "right" answers. strong cases can sometimes be made for opposite sides of a particular issue. In inquiry, discussions should not be the search for acceptable answers. An effort must be made to create an anxiety-free classroom atmosphere where each student feels able to express his or her own point of view. Both students and the teacher should come to accept the difference between a search for factual information and questioning related to values that concern fairness. Since law involves an effort to achieve some measure of justice by balancing competing interests, it may be impossible to find "correct" answers to such problems. The purpose of the inquiry process is to explore fully the options open to the individual and to society in an attempt to balance liberty and fairness with order.

The inquiry approach is a teaching strategy which improves through use. Teachers should not become discouraged if it seems an uncomfortable style at first -- the skill can be developed by practicing it through the use of materials such as those included in this manual. By facilitating but not dominating, by playing the role of skilled questioner and non-judgmental moderator, the teacher will help his or her students to explore their values, ideas, and feelings, and to grow in their ability to anticipate the consequences of the various choices open to them.

CASE STUDIES

One technique for inquiry is the case method. By using case studies, whether real or hypothetical, students can analyze conflicting points of view and grapple with the realities they face each day in their relationships with other people. A case which is chosen to present unsettled legal questions can be a very successful classroom approach. After discussion, students should feel free to leave the class with differing opinions on the issues of the case and/or the decision which the court may have rendered. In fact, this disagreement can create a classroom atmosphere favorable to the introduction of additional resource material for background or perhaps an outside speaker who can provide the class with data on the subject.

Any case study which has been adjudicated by a court can be broken down into the following elements, for study purposes: facts, issues, decision, and opinions.

Facts

Students should be asked to list the facts in a case. They should be made aware of the importance of this exercise, since everything else in the case hinges on an accurate accounting of the facts involved. The teacher can ask his students to enumerate them according to the following categories:

1. Uncontroverted facts – those not subject to challenge or dispute (students should point to specific citations in the case).
2. Implied or inferred facts – those which logically follow the uncontroverted facts (students should justify the inferences or implications they have made; they may not be right, but at least they should be reasonable assumptions).
3. Missing facts – other factors not stated in the case which are needed for reaching a decision.
4. Important facts – as opposed to the irrelevant or inconsequential facts.

Several strategies can be used in presenting the facts. Sometimes the teacher may want to provide the students initially with only the facts, even though a case has been adjudicated, so that students are free to form their own opinions. Later, the court decision can be handed out and a discussion held as to why student decisions differ from the court's verdict, if they actually do.

The teacher could prepare in advance a tape recording stating the facts of the case, which can be played more than once in class to emphasize what really are uncontroverted facts. Did students perhaps hear the tape differently? A variation on this approach would be to use several students to create a videotape or role-play depicting the facts. This simulates a real life situation wherein the student witnesses to the facts try to report them accurately, with possible conflicting testimony.

Issues

These comprise the most critical part of any case study since the decision in a case is based on what the issues are perceived to be. It is essential to zero in on the issues involved in a case to avoid far ranging "bull sessions," which take up precious class discussion time. The teacher may wish to solicit the assistance of a good attorney if he feels inexperienced at specifying and isolating the various issues touched upon in a case.

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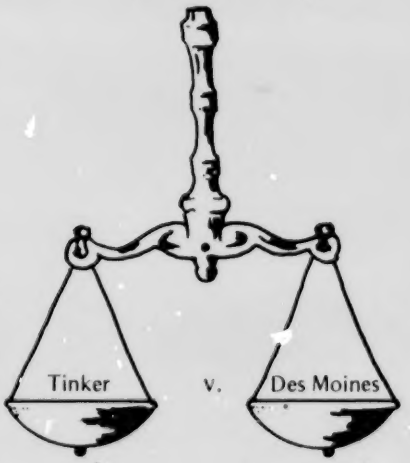
Issues can be phrased in terms of "whether or not ..." statements[1] Although the case method is customary procedure for law school students, it is relatively new for those in high school social studies classes. Therefore, the teacher will have to exercise patience in constantly stressing the need to adhere to the stated facts in the case and to the principal issue or issues. Students are thus led not only toward a substantive conclusion – for example, that Tinker (in *Tinker v. Des Moines*) had a right to wear an arm band in school – but are moving toward a wider awareness of the scope and limits of free expression.

A useful approach to a case study is to examine the question of interested parties. *Law* is a compromise of competing *interested* parties. Law is a compromise of competing interests. Ask who the competing parties are in the outcome of a case. What is the interest of each person or group, such as students, parents, school board, administrative, civil liberties groups, community? How would they like the case resolved? Why? How can a decision be reached, if possible, which takes into account all of these interests? To depict the balance of conflicting issues in the case, the teacher can also draw a set of scales on the blackboard of an overhead transparency and then visually weigh the arguments for the plaintiff and for the defendant as the students define them.

Example: *Tinker v. Des Moines* – a case in which students were suspended from high school for wearing black arm bands in protest against the Vietnam War.



Another strategy, which can be an enjoyable and educational activity for the students, is to divide them into small teams and have them prepare collages – using newspaper and magazine clippings – which depict the facts and issues in the case. The objective is to employ a non-verbal approach to the case study method. For example, in the *Tinker* case, the facts include students, Vietnam war protest, a school setting, parental support for the plaintiffs, suspension from school by the principal, and so on. A collage representing these facts might include such things as pictures of protesters (perhaps arm bands could be added with a black

[1] For further help, consult Gibson, William M., *Lessons in Conflict: Legal Education Materials for Secondary Schools*, Lincoln Filene Center for Citizenship and Public Affairs, Tufts University, Medford, Massachusetts, 1970.

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felt pen), photographs of war, scenes of a school building and/or classroom activities, older people depicted behind the students, and/or a picture of a "principal" figure shaking his finger at the youths! In addition to illustrations, words can be used by cutting out letters and affixing them to the paper or cardboard. Collages of issues representing the conflicting points of view in a case (as shown on the scales above) can also be prepared by the students. The collages can later be displayed on the classroom bulletin board, thereby giving recognition to the efforts of the students.

Decision and Opinion

The *decision* in a case is a simple "yes" or "no" response to the central issue. Decision-making is an everyday occurrence in law. It is a challenging lesson to students that a decision must be made to resolve the problem – someone will win and someone will lose. It should be noted that there are two results of any decision: first, the guilt or innocence of the particular individual(s) involved is settled; second, a precedent is set which will affect society whenever future cases of this sort arise.

The *opinion* must include both the reasoning or justification for the decision *and* an explanation of why the opinion disagrees with, or refutes, other points of view. This reasoning provides the student with appreciation of precedent and an understanding of various legal concepts. Alert students to the possibilities for varying interpretations of the law by judges. As court opinions are read and discussed, distinctions should be noted between real statements of law and judges' expressions of "obiter dicta" (incidental or collateral opinions which are not necessary to support the decision and not binding). Also, there may be value in examining minority dissenting opinions (if the decision was not unanimous) or *concurring* opinions. Justices often write concurring opinions when they agree with the majority decision but for different reasons and wish to indicate that they might decide differently under other circumstances.

It is useful for teachers to be aware of a few similar cases in a subject area. This manual includes references to other cases which are relevant but contain facts that may be slightly different (wherein the court may have reached a different verdict). Discussions which begin with a statement such as "now, what about a slightly different situation in which..." can be used to further clarify the reasoning of the court. For instance, would the court have acted differently if Tinker, instead of wearing a symbolic armband, had used the school's newspaper to verbally express his views?

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HOW TO FIND LEGAL CASES

Any case which has been adjudicated in a court of law is given a title, reference letters, and numbers. The "citation," as it is called, which follows the title of the case (plaintiff v. defendant), indicates what court decided the case and when and where the decision is printed. Therefore, if a teacher or student wishes to consult the text of a decision on a case cited in this manual or elsewhere, he or she should be able to find it in a law library. There are law libraries at all college and university law schools and in the Federal Court Buildings and State House. If still at a loss, there will usually be someone there willing to help a "bewildered layman."

Use the following examples as a guide:

1. *Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).* The letters "U.S." indicate that this case was decided by the United States Supreme Court, the highest court in the Country, and can be found in the United States Reports. From the numbers, it becomes clear that the case is located in Volume 393 of the U.S. Reports at page 503, and that it was decided in 1969.

2. *Richards v. Thurston, 424 F. 2d 1281 (1st Cir. 1970).* This case is found in volume 424 of the Federal Reporter, Second Series at page 1281. Cases found in the Federal Reporter ("Fed.") or Federal Reported, 2nd Series ("F., 2d") were decided by the United States Courts of Appeals, of which there are eleven – one level below the Supreme Court. In this one, the notation within the parenthesis indicates the case was decided by the Court of Appeals for the First Circuit in 1970.

3. *Hammond v. South Carolina State College, 272 F. Supp. 947 (D.S.C. 1967).* The Federal Supplement ("F. Supp.") reports, for the most part, cases from the United States District Courts, of which there are one or more in each state. This case, found in volume 272 of the Federal Supplement at page 947, was decided by the U.S. District Court for the District of South Carolina in 1967.

4. *State Board of Education v. Board of Education, Netcong, 57 N.J. 172 (1970).* Only decisions of the New Jersey State Supreme Court, the state's highest court, are reported in the New Jersey Reports. This particular case can be found in volume 309 of the Reports at page 476, and was decided by the State Supreme Court in 1970.

ROLE PLAYING AND SIMULATION GAMES

Role-playing is another useful classroom technique in law related education. Its prime purpose is to develop students' abilities to empathize with individuals different from themselves and with points of view different from their own, or to learn how it feels to be in someone else's shoes for a short while. It promotes active student involvement in taking the roles of attorneys, probation officers, policemen, judges, or public officials in simulated true-life situations. A full scale role-playing activity requires considerable time and effort on the part of the teacher and students in order that participants have an adequate understanding of the responsibilities and duties associated with each role. Without such preparation, the time spent in the simulation may be pointless.

Simulations can be designed for institutional settings such as a school disciplinary hearing, a juvenile court disposition, or a Supreme Court trial. The specific roles involved are assigned to the students, and a set of procedures is followed, with possible time limits established for such processes as opening arguments, cross-examination, deliberation, and decision. (More precise instructions for a few simulations are included later in this manual). The teacher may wish to participate in role-playing exercises by assuming roles such as chairman of a town meeting, Chief Justice of the Supreme Court, or a juvenile judge. This not only provides the opportunity to insure that proper procedures are followed, but also serves to demonstrate to students how the role might actually be carried out.

Apart from these more elaborate role-playing situations, quickly arranged dramatizations (such as a "stop-and-frisk" procedure on the street or a confrontation between a student and school librarian over stolen books), can be used to enliven a classroom presentation and to illustrate vividly the case under consideration.

While the enactment of the simulated event is in itself instructive to students, it is essential for the class to have a "debriefing session" (a critique or post-discussion) after the role-play is over. This discussion should bring out an awareness of the outstanding essentials of such hearings, trials, or situations so that the students do not leave the activity with poorly developed, or mistaken, conclusions.

00021

VOCABULARY AND TERMINOLOGY

Students will encounter a variety of legal vocabulary in their study of the justice system. Although an attempt has been made in this manual to keep unnecessarily difficult or obscure terminology to a minimum, many terms are probably new to the students. The proper and precise use of terminology is very important in discussing legal and criminal issues. Therefore, students should be encouraged to refer frequently to the glossary included in the appendix, and to keep a page in their notes to list new words brought up in the readings or classroom discussion. Terms with different shades of meaning are often used indiscriminately by adults and young people, when, in reality, there are important distinctions among them which must be clearly understood to avoid confusion, as, for example, between felony and misdemeanor; larceny, burglary, and robbery; probation and parole; acquitted and dismissal; etc.

00022

OTHER STRATEGIES

Small Groups

Large classes make it difficult to involve all the students in a discussion without the few more vocal ones dominating the rest. Whenever possible, the class should be broken down into small discussion groups, with a spokesman from each group designated to report back to the entire class. This greatly improves student interest and involvement. If appropriate, the small groups might be given specific tasks to accomplish, such as to develop the prosecuting or defense attorney's arguments in a specific case.

A particularly useful technique in small-group discussions is the "fishbowl." As the name implies, some of the students are the "fish" inside, while others remain outside the "glass" and look in. The teacher selects a small number of students to sit in the middle of the room and discuss or debate a particular question. The rest of the class arranges themselves around the outside of the small circle as observers to monitor the discussion (they may even be asked to keep written notes on the course of discussion or participation by individual students within the circle). After a short time, the teacher has the students reverse roles, with the observers becoming participants and vice versa.

Peer Teaching

Individuals or small groups can be assigned (or will volunteer) to do in-depth research on particular subject areas not covered adequately in the core text or manual. They can then be effectively used as peer teachers, sharing their knowledge with other students. They might even prepare a one or two-paged di:to master summarizing their findings or statistical data which can then be duplicated for distrioution to the rest of the class for reference. The peer teaching approach is particularly useful when small student "task forces" have interviewed individuals or have actual field experiences in community justice agencies, and can report back to the entire group on what they learned.

Films

Many useful filmstrips and films have been developed in the area of law-related education which can serve as good springboards for discussion. All films should always be previewed by the teacher before classroom use. In the usual procedure the entire film is shown and then followed by questions. However, this is not always the most effective method, since questions and issues come up during the film, especially if it depicts a case study or a sequence of procedures involving criminal law. In previewing the film, it is well to determine the particular points (e.g., after the incident has occurred, after the lawyers' arguments, etc.) at which the film can be stopped for discussion of the facts or issues involved, when it is being shown to the students.

00023

Outside Speakers and Field Trips

As a change of pace, and for amplification on a particular subject, outside persons can be invited to school to give in-class presentations and conduct question-and-answer sessions. Such resource people should be carefully selected and the reasons for their presence should be precisely defined to avoid later difficulties. Students in the class can often be helpful in providing the contacts with their own parents or people they know who are police chiefs, social workers, probation officers, etc. Resource persons do not have to be important or prominent. For example, an interesting class discussion might arise with a few young people who had spent a month in the county's detention center, or with a local merchant talking about his problems with shoplifting.

Field trips outside the classroom can be useful, if well planned, in integrating the curriculum with the activities of the community, of which the school is a part. Caution should be taken, however, to avoid becoming ensnared into public relations tours of facilities which do not accurately reflect institutions as they really are. Sensitivity is also needed to assure the people under observation that they are not exhibits on display. For example, if the teacher arranges a class visit to a drug rehabilitation center or a juvenile house of detention, every effort should be made to enable students to talk *with* the young resident people in an informal "rap session." Field trips can also be of an individual nature in which students separately make appointments to interview individuals, e.g., Public Defender, District Attorney, etc.

Other Ideas

The variety of interesting methods for approaching a curriculum in legal education is limited only by the time available and the energy and imagination of the teacher and the students. Opinion polls can be conducted, formal debates held, examples from literature (stories, plays, fables, allegories, etc.) introduced to illustrate legal principles, and so on. By following some of the suggestions described in this introductory section, the teacher proceeding through the material in this manual can plan a worthwhile, challenging, and educational experience for the students as they struggle with their roles in a society under the rule of law and justice.

00024

CHAPTER II

THEORIES AND OPINIONS

INTRODUCTION

Disagreement between journalists and lawyers concerning the conflict of the First Amendment[2] and the Sixth Amendment[3] has continued for years. The problem of fair trial vs. free press surfaces anew with every celebrated case, and theories and opinions vary.

This section presents several noteworthy opinions designed to stimulate students to weigh the pros and cons of the issue of fair trial vs. free press. Questions for thought and a student activity are included.

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[2] "Congress shall make no law ... abriding the freedom of speech, or of the press. ..."

[3] "In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.

00025

JURY QUEST

Article titled "Watergate Jury Quest" by Lesley Oelsner, October 11, 1974. On topic of Watergate: Jury Quest -- Role of Media; Pretrial Publicity Creates a Problem That Many Believe Is Insurmountable. Copyright 1974 by The New York Times Company. Removed to conform with copyright laws.

FAIR TRIAL–FREE PRESS: A DIFFERENCE OF OPINION

The two-position statements below reflect the views of the American Bar Association and the American Newspaper Publishers Association. Compare and discuss these views. How do they differ? Have there been important cases in your city where these views have come into conflict? Which position do you agree with?

Usually, lawyers, judges, reporters, and newspaper editors are willing to visit classes and talk to students about issues such as this one. Call your local bar association and newspaper and see if you can arrange such a visit. If you don't have time for this, it would be worthwhile to interview a lawyer, judge, or newsman on the telephone or in his office on the fair trial-free press issue. A valuable class activity in advance of a visit or an interview is the development of a series of questions to use in the session.

The American Bar Association, by accepting the Reardon Report, recommended the revision of its Canons of Professional Ethics to make unethical the release before trial by any lawyer (whether prosecutor or defense counsel) of any information concerning:

1. The prior criminal record of the defendant, or his character or reputation;
2. The existence or contents of any confession, admission or statement given by the defendant?
3. The results of any tests given the defendant or of the defendant's refusal to take any tests;
4. The names of prospective witnesses;
5. The possibility of a plea of guilty.
6. Any opinion as to the defendant's guilt or innocence or the merits of evidence in the case.

The Report recommended that violation of these rules be punished by reprimand, suspension or disbarment.

On the other hand, the committee report of the American Newspaper Publishers Association set forth these conclusions:

"To fulfill its function, a free press requires...free and uninhibited access to information that should be public.

"There are grave inherent dangers to the public in the restriction or censorship at the source of news, among them secret arrest and ultimately secret trial...

"Rules of court and other orders which restrict the release of information by law enforcement officers are an unwarranted judicial invasion of the executive branch of government.

"The people's right to a free press which inherently embodies the right of the people to know is one of our most fundamental rights, and neither the press nor the Bar has the right to sit down and bargain it away."

Clark, Todd, ed. *Bill of Rights Newsletter*, 7:28, Fall, 1973.

00028

CHAPTER III

ACTUAL CASES

INTRODUCTION

Crime and violence stories have always been considered by editors and broadcasters as having high reader-interest value. They feel the public has the right to know when crimes have been committed and what steps authorities are taking to solve them.

Various critics charge, however, that the reporting of crime news limits the guarantee of securing an impartial jury. It is also felt by many that the press, after a particularly shocking crime, act more like interrogators than reporters of fact.

Presented in this section are three actual murder cases which received some of the most intense publicity in the twentieth century. Can a person accused of such a sensational act of violence receive a fair trial by an "impartial jury"?

After reading each of the cases presented herein, a class discussion should be held, using the questions provided.

00029

THE CASE OF DR. SAM SHEPPARD (384 U.S. 333) (1966)

On July 4, 1954, Marilyn Sheppard, wife of Dr. Sam Sheppard was bludgeoned to death in their home in a Cleveland suburb. According to Sheppard, he was asleep on the couch when he heard his wife cry out in the early morning hours. Sheppard then told of his encounter with a "form" beside his wife's bed and of his subsequent struggle with the "form" and being rendered unconscious by a blow on the back of the neck. He then regained consciousness and pursued the "form" out the door to the lake shore in front of his home. He struggled with the "form" and once again was knocked unconscious. Upon regaining consciousness, he notified the Mayor of the village in which he lived. Sheppard was removed by his family and friends to a nearby clinic operated by his family in order to take care of his injuries. Sheppard originally offered to take a lie detector test if it were available, but later refused.

Front page editorials relating to the incident stated that somebody was "getting away with murder" and asked "Why No Inquest? Do It Now Gerber." Dr. Gerber, the Coroner, called an inquest the same day. This hearing was broadcast throughout the gymnasium where it was held with live microphones placed at the Coroner's seat and witness stand. During the questioning of Sheppard, his affair with Susan Hayes became public, which heightened the sensational character of press coverage. The newspapers argued the facts of the case in their editorials; pointed out discrepancies in Sheppard's testimony; told of evidence which was never produced; stressed his extra-marital affairs and demanded Sheppard's arrest. Other front page editorials asked "Why Isn't Sam Sheppard in Jail? and "Quit Stalling – Bring Him In.".

With his arrest on the evening of July 30, there was no letup in the publicity attending the case. There were reports of clues in the press which in fact never existed, cartoons chiding him for his reluctance to help solve the case, and in one instance a photograph which had been retouched to indicate to the nespaper reader that Dr. Sheppard was the murderer.

Every juror, except one, testified to having read about the case or having heard broadcasts about it. At least seven of the twelve jurors had one or more Cleveland papers delivered to their homes. In the course of the trial, pictures of the jury appeared in the Cleveland papers over forty times.

Sheppard was found guilty of the murder of his wife by the Court of Common Pleas of the Cuyahoga County, Ohio. His conviction was affirmed by various appellate courts and the Ohio Supreme Court affirmed it in 1956.

Finally, F. Lee Bailey, now famous as a defense attorney, became interested in the case. He appealed to the U.S. Supreme Court saying that Sheppard was denied a fair trial because of the trial judge's failure to protect him sufficiently from massive, pervasive, and prejudicial publicity that attended his prosecution. On Sheppard's behalf, Bailey was reviewed by the court. (See Bailey's book, *The Defense Never Rests*, for a full acount.)

On June 6, 1966, the United States Supreme Court, Justice Black dissenting, handed down its decision in *Sheppard v. Maxwell*, 394 U.S. 333 (1966). Sam Sheppard had been convicted in 1954 by an Ohio court for the murder of his wife. In its opinion the U.S. Supreme Court indicated that "...the state trial judge did not fulfill his duty to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom..." Thus, Dr. Sam Sheppard was denied a fair trial because of attendant publicity.

After twelve years in prison Sheppard was retried and acquitted. For several years he tried to put the broken pieces of his life back together. Finally, while working as a professional wrestler, he died of a heart attack.

Questions for Discussjon:

What do you think?

1. Do you think Sheppard had legitimate grounds for an appeal? Why or why not?

2. Should the press be controlled in reporting criminal trials? Why? What kinds of controls would you impose?

3. What dangers might arise if the press is restricted in its coverage of a criminal trial?

4. Is the cost of the retrial of an accused worth having excesses in reporting of a criminal trial?

5. Would you agree with the American Bar Association that there should be restrictions on the press in covering such trials? Would you agree with the American Newspaper Publishers Association that self-discipline and discretion can best eliminate such excesses and that the public's right to know will be jeopardized if the ABA code is adopted?

00031

THE CASE OF RICHARD SPECK

In July, 1966, the nation was shocked by the brutal and systematic murder of eight student nurses in their Chicago apartment. One nurse survived and was able to give a description of the killer who was later arrested and held for trial. The circumstances of his trial were different from those of Sam Sheppard's, twelve years earlier. The following article from *Newsweek*, March 6, 1967 describes just how different.

"A raw-boned young man with long sideburns and a duck-tail haircut went on trial last week in Peoria, Illinois, charged with the mass murder last July of eight student nurses in Chicago. The trial of Richard Franklin Speck, a 25-year-old drifter, was moved 150 miles to the southwest to protect the defendant's right to a fair and unprejudiced trial. But as the prosecutor and defense counsel began selecting a jury, the focus of attention was less on Speck and the citizens of Peoria who must judge him and more on a classic collision between justice and journalism.

Mindful of recent Supreme Court rulings to assure fair trial, Judge Herbert C. Paschen severely restricted press coverage of a case that has already been dubbed 'the crime of the century.' The rules, which are the strictest ever laid down for a major American criminal case, promptly touched off a torrent of criticism from news organizations that the judge had gone far beyond reasonable precautions. The *Chicago Tribune* blasted the rules in a page-one editorial and then filed suit against Judge Paschen calling the limitations unconstitutional. And J. Edward Murray of the American Society of Newspaper Editors denounced the guidelines as 'either ridiculous or deliberately, unwarrantedly punitive against the press.'

Judge Paschen's fourteen points of acceptable conduct for the twenty-seven reporters allowed in the courtroom forbade publication of all out-of-court remarks by trial principals; barred taking photographs of jurors or even printing their names until after the verdict; prohibited sketches in the courthouse, as well as cameras and tape recorders in the courtroom; and withheld access to trial transcripts from reporters until the verdict was reached. The press squawked loudly and instantly, and the judge backed down a bit – allowing reporters to acquire transcripts and print the names of jurors after they had been sequestered. Beyond that, Judge Paschen stuck by his rules. 'We want to give this man a fair and orderly trial without any error in it so we will have to do it only once,' he said, even as the State Supreme Court ordered him to answer the Tribune's suit.

Despite Judge Paschen's strict rules, there were doubts Speck's trial could be so free of prejudice in Peoria. Speck's lawyer, respected public defender Gerald Getty, had already asked for a change of venue from Peoria – laying the groundwork for a possible appeal. Peorians read newspapers, too, and for two weeks last summer the Speck case dominated page one of the hometown *Journal Star*. One story, referring to Speck's birthplace in nearby Monmouth, Illinois, was headlined MONMOUTH-BORN CONVICT NAMED AS BUTCHER OF 8 NURSES. That sort of play in the press would be tough to forget.

At the weekend, 124 prospective jurors had been examined and no one sworn. Even with the elaborate safeguards on reports of the trial, it was apparent that in the era of mass communication, finding an open-minded jury was no less difficult in Peoria than in Chicago. And the dilemma of free press vs. fair trial was no closer to a solution."

Speck was convicted and sentenced to death for the crime. His case was appealed to the Illinois and the U.S. Supreme Court. In 1970 the U.S. Supreme Court overruled the decision to execute Speck and ordered the Illinois Court to take appropriate action. While Speck is now serving a life sentence for his crime, efforts to win a new trial on the grounds that a fair trial was impossible for him to obtain have not succeeded.

Questions for Discussion:

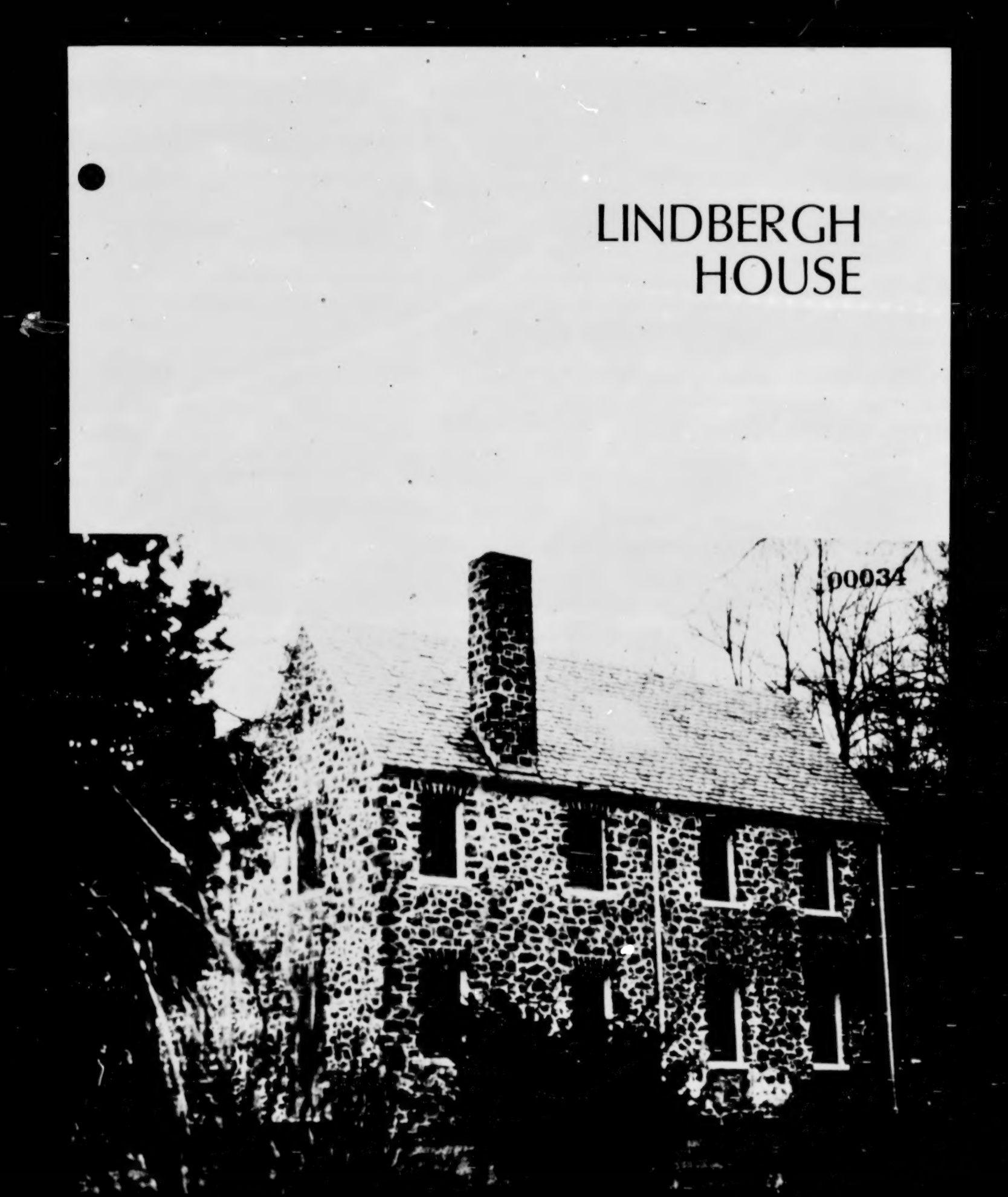
1. Do you agree with the action taken by the Judge at Speck's trial? Why? Why not?

2. Do you think the public had the right to know more about the case than the judge's rules allowed?

3. Can you find articles on the Manson case in Los Angeles listed in the Readers Guide which deal with the Fair Trial/Free Press issue?

00033

LINDBERGH HOUSE



THE LINDBERGH CASE

Before the issue of fair trial -- free press had been given serious consideration by either the Supreme Court or the publishers of America's newspapers, a kidnapping occurred in the State of New Jersey that illustrates the problem of publicity carried perhaps to an extreme form in American history.

Probably no twentieth century American has received as much hero worship from the public as did Charles A. Lindbergh, the young mid-western pilot who was the first person successfully to fly the Atlantic Ocean, non-stop. As a public hero, worshipped by millions, Lindbergh had trouble escaping the crowds who gathered whenever he was seen in public.

In 1929, he married the beautiful daughter of Mr. Dwight Morrow, a wealthy businessman, whom he had met while visiting Mexico City where Morrow was the U.S. Ambassador. The marriage of "Lucky Lindy" and the birth of their son attracted great public attention. Everything that Lindbergh did quickly became public information.

The description of the case which follows should illustrate more fully the dilemma of fair trial -- free press.

On the evening of March 1, 1932, the child, Charles Lindbergh, Jr., was put to bed about eight o'clock and left sleeping in the house of his parents in Hopewell, New Jersey. About ten o'clock the nurse, Miss Betty Gow, found the child gone. On the window sill was a letter demanding $50,000 in ransom and signifying that later instructions concerning the method of payment would be forthcoming.

The next day a shocked nation began a massive manhunt for the baby and the kidnapper. Charles Lindbergh was the nation's young hero. Aid and sympathy was offered from people around the world. Even Al Capone, from his jail cell, offered a $10,000 reward for the capture of the kidnapper.

With only a letter and a ladder used to kidnap the baby as clues, Charles Lindbergh, on March 4, 1932, made a plea for representatives to meet the kidnapper and exchange the ransom money for the child. The plea appeared in the *Bronx Home News* newspaper. Dr. John F. Condon of the Bronx responded to the plea and agreed to act as Lindbergh's representative.

In March, 1932, John H. Curtis, a shipbuilder of Norfolk, Virginia, contacted Reverend Harold Dobson Peacock concerning the kidnappers. Curtis claimed he was first contacted by the kidnappers on March 9. According to Curtis the kidnappers were a group of persons involved in organized crime. This fit with the popular explanation of the crime. Most persons believed that the kidnapping was a well organized plot which involved a gang. Following this lead Charles Lindbergh made several trips by sea with Curtis in search of his son. John Curtis was later arrested and charged with compounding a felony and perpetrating a fraud. He was tried and found guilty on June 27, 1932. He was sentenced to a year in prison and a fine of $1,000. After paying the fine his prison term was suspended.

During the fraud attempt by Curtis, Dr. John Condon was pursuing leads as Lindbergh's representative. The first negotiation with the kidnapper occurred at the Woodlawn Cemetery in the Bronx on March 12. The next rendezvous was at Saint Raymond's Cemetery in the Bronx on April 2. At this meeting, Dr. Condon received the night shirt of the kidnapped baby. This was proof to Charles and Anne Lindbergh that this was the kidnapper.

On April 12, 1932, ransom was paid to the kidnapper by Dr. Condon in Saint Raymond's Cemetery. The ransom of $50,000 was paid to a man with a German or Scandanavian accent. The payment was made with gold certificates with the hopes that it would be easier to trace. In fact, on May 1, 1933 gold certificates were taken out of circulation to aid in the tracking down of the ransom money. This would have been done sooner but the economy was not stable enough in 1932. In exchange for the ransom money the kidnapper gave false information as to the whereabouts of the baby. The kidnapper claimed that the baby was on the boat "Nelly," in Buzzards Bay, between the Massachusetts' south coast and Martha's Vineyard.

Gaston Means and Norman Whitaker were at the same time negotiating with a Mrs. E.W. McLean, a friend of the Lindberghs, claiming they were in contact with the kidnappers. They were arrested on May 8, 1932, and charged with conspiracy to defraud Mrs. McLean of $35,000. Four days later, on May 12, the body of the baby, Charles Lindbergh, Jr., was found just a few miles from the Lindbergh home. The body was accidently discovered in a shallow grave in a ditch by the side of the Princeton-Hopewell Road. An autopsy disclosed the baby suffered three fractures of the skull and had been killed shortly after being kidnapped. Most theories agree the baby died within hours after the kidnapping. One claim is that the baby was killed before the kidnapper left the grounds of the Lindbergh estate.

Following the disclosure of the baby's death, the Judiciary Committee of the U.S. Congress immediately released a bill making kidnapping a federal crime. On June 22, 1932, the "Lindbergh Act" was passed by Congress and kidnapping became a federal offense.

[CHAPTER 271.]

AN ACT

June 22, 1932
[S. 1525.]
[Public No. 189.]

Forbidding the transportation of any person in interstate or foreign commerce, kidnaped, or otherwise unlawfully detailed, and making such act a felony.

Kidnaped, etc., persons. Transportation of, in interstate or foreign commerce, forbidden.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward shall, upon conviction, be punished by imprisonment in the penitentiary for such term of years as the court, in its discretion, shall determine: *Provided*, That the term "interstate or foreign commerce" shall include transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia:

Provisos. "Interstate or foreign commerce," construed.

Provided further, That if two or more persons enter into an agreement, confederation, or conspiracy to violate the provisions of the foregoing Act and do any overt act toward carrying out such unlawful agreement, confederation, or conspiracy such person or persons shall be punished in like manner as hereinbefore provided by this Act.

Conspiracy to violate, etc., punishable.

Approved, June 22, 1932.

00036

Gaston Means and Norman Whitaker were tried on June 8, 1932, and convicted on June 15 in the Superior Court of the District of Columbia for attempting to defraud Mrs. E.W. McLean of $35,000 on a promise the Lindbergh baby would be returned. Mrs. McLean was supposed to have pawned the "Hope Diamond" and given the money to the kidnappers. Charles Lindbergh testified at the trial and recounted how he had never seen his son alive again and how on May 13, 1932, he identified the decomposed body of his son in a morgue in Trenton, New Jersey. Means and Whitaker received 15 years in prison.

The police were pursuing the theory that the kidnapping was an inside job. The police were investigating to discover if there was a slip of information or if one of the servants was a member in the kidnapping plot. The police followed this theory for two reasons: (1) only the servants knew the baby would be at the Lindbergh home in Hopewell and (2) the layout of the house had not been made public, so how did the kidnapper know where the baby's room was located?

For a time the investigation centered on Violet Sharpe, a maid for Dwight Morrow in Englewood, the father of Anne Morrow Lindbergh. Violet Sharpe was undergoing heavy questioning by the police for a recent date with a petty thief, Ernie Brinkhart from New York City. During the heavy questioning she admitted that she may have inadvertently told Ernie about the Lindbergh's staying in Hopewell because the baby had a cold. In addition, Violet had many of Ernie's business cards in her possession. The police questioned Ernie Brinkhart, who claimed he never heard of Violet Sharpe. His wife and cousin backed his claim that they were playing cards on the night of the kidnapping. The police were not convinced. Violet, faced with more heavy questioning committed suicide by drinking poison. Following the suicide, an Ernie Miller came forward and said it was he who had the date with Violet.

There was a great deal of criticism of the police following the suicide of Violet Sharpe. Criticism was voiced as far away as Parliament in Great Britain. The kidnapper still had not been found.

A prominent psychiatrist theorized that the kidnapping was the act of a single person. The reasoning was: (1) in the eyes of the American public Lindbergh was all-powerful; (2) someone whose position was inferior, even by normal standards, but who had delusions of omnipotence, regarded the young idol as a rival, an enemy. If he attacked and defeated his rival, he would prove that he was greater than Lindbergh.

Dr. John Condon continued his search for the man with a German accent. After months of continued investigation, the police on September 20, 1934, arrested Bruno Hauptmann, a resident of the Bronx, and charged him with the murder of Charles Lindbergh, Jr.

The trial of Bruno Hauptmann began on January 2, 1935, at the Flemington Court House and lasted until February 13, 1935. The court battle began in Hunterdon County with Edward Reilly as the famous defense counsel and Robert Wilentz, the young New Jersey Attorney General. Robert Wilentz, for the State, produced evidence to show that Bruno Hauptmann was the kidnapper and had murdered the Lindbergh baby.

First, the ransom note was traced to Hauptmann by a team of handwriting experts. Second, the ladder used during the kidnapping was linked to Hauptmann. A wood expert, Arthur Koehler, studied the wood on the ladder used during the kidnapping. The wood used was traced to Hauptmann. In addition, Hauptmann was caught because he was spending the gold certificates which were part of the Lindbergh ransom money. All gold certificates were illegal at the time. After the police tore his home and garage apart, they discovered $14,600 in the ransom gold certificates. ($30,000 of the ransom money is still missing today.)

For the defense, Edward Reilly related his client's story that he (Hauptmann) was holding a bundle for his German friend, Isidor Fisch. Fisch had left for Europe so Hauptmann opened the bundle. He needed the money, considered it a windfall and began spending the money. Hauptmann needed the money because he had to care for a wife and child. Reilly also attempted to show that Betty Gow, the nurse of the Lindbergh baby, Elsie Whateley, the housekeeper and cook in Hopewell, and her husband Oliver (dead at the time of the trial) were the actual kidnappers with conspirators on the outside. Reilly also tried to implicate staff members of friends of the Morrows. At one point during heavy questioning by Reilly, Betty Gow collapsed after three hours of testimony at the trial.

The most detrimental testimony against Bruno Hauptmann was that of Dr. John Condon. After eleven hours of deliberation, the jury, on February 10, 1935, found Hauptmann guilty of murder in the first degree. They made no recommendation and the death sentence was mandatory.

Following an appeal Bruno Hauptmann was executed in the electric chair at Trenton State Prison on April 3, 1936.

Conclusion – Lindbergh Case Follow-up

From the beginning to the end of the Lindbergh kidnapping affair, the press gave the case sensational publicity. So great was public interest that newspaper men from all over the world were sent to cover the case.

Not content to print information provided by the family, the reporters tried to track down every lead themselves. Some authorities claim that newsmen tramped all over the area surrounding the house immediately following the kidnapping and may have destroyed clues to the identity of the kidnappers. Furthermore, the knowledge that there would be widespread publicity about the crime may have so frightened the kidnappers that the baby was killed almost immediately after he was taken from his bed.

At last, when a suspect was arrested, the pressure for a guilty verdict and the impossible task of finding jurors who could impartially weigh the evidence may have made it impossible to provide a fair trial for the accused. Even today, almost any American over 50 years of age can remember the case and recall specific information based on the exceptional publicity that appeared at the time.

After reading the brief description of what happened, do you believe Hauptmann was the guilty party? Why? Why not?

If you have a school, town, or college library nearby which has copies of daily newspapers or popular magazines going back to 1930, look at articles which appeared on the kidnapping and the trial. Do these materials change your mind about the case? How do you react to the type of articles that you found?

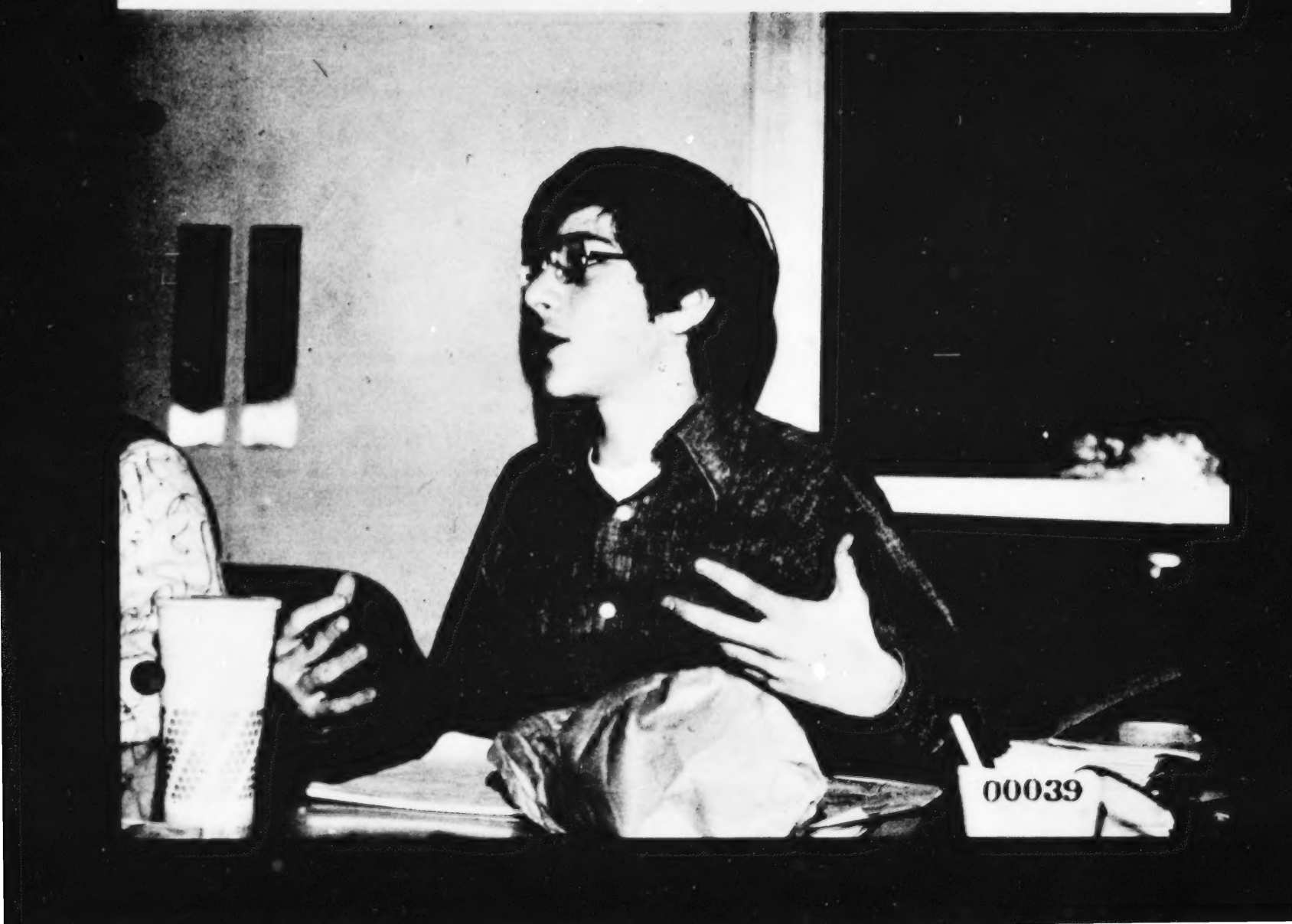
Interview several people who remember the case. Do they believe Hauptmann was guilty or innocent? Where did they get their information? Could they have served as impartial jurors at the trial?

Further Questions for Thought:

1. Did the public's right to know justify the publicity given the case?
2. Did the family have a right to privacy?
3. Did the accused have the right to silence or at least some limit set regarding publicity so that he could be assured a fair trial?

00038

LAW ACTIVITIES



CHAPTER IV

STUDENT ACTIVITIES RELEVANT TO COURT DECISIONS

INTRODUCTION

Active participation by students encourages the development of analytical and evaluative skills which enables them to apply the acquired basic knowledge to a variety of situations.

Discussions, role-playing, and debate are emphasized. Questioning and challenging students' views enhance their abilities to think logically and analytically.

The activities and projects contained in this section are effective in developing these skills. They challenge and guide students in a critical examinatior of the values and principles that underlie the legal process.

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AN APPROACH TO A PROBLEM OF JUSTICE IN AMERICA:

FAIR TRIAL v. FREE PRESS

Directions: Introduce students to the Justice System. Consider major constitutional question (Fair Trial v. Free Press). Provide field experiences for students in the System.

There has long been a potential conflict between the guarantees of the First Amendment right to freedom of the press and speech and the Sixth Amendment right to trial by an impartial jury. Each of these rights is quite basic to our free society, but where they finally are in direct conflict, some balance must be achieved.

In 1918 the Supreme Court considered this conflict in *Toledo Newspaper Company v. U.S., 247 U.S. 402 (1918).* In that case the newspaper had published commentaries concerning a civil suit then pending, evidently hoping to influence the outcome of the case. The Supreme Court set a precedent here favoring the right of fair trial. However, in *Nye v. U.S., 313 U.S. 33 (1941),* the Court exactly reversed its earlier stand in the *Toledo Newspaper* case. The Supreme Court now began to limit the power of any court to control outside influences.

In *Bridges v. California,* 313 U.S. 252 (1941), the Supreme Court spelled out the standard that was to be used in weighing cases in this area: publication was to be limited only where it would present a clear and present danger to the judicial process. The fact that some evil may result is not enough to suppress publication, the Court continued. Rather, "the evil itself must be substantial."

The trend favoring the freedom of the press continued until 1959, when in *Marshall v. U.S.,* 360 U.S. 310, the Court recognized the influence and power that the press could have over the outcome of the trial. In Marshall the court reversed a conviction for unlicensed dispensing of the drugs by the defendant because jurors had read of defendant's prior convictions on similar charges in the newspapers. Finally, in *Estes v. Texas,* 381 U.S. 532 (1965), the Supreme Court reversed a conviction for swindling because of much publicity and the actual proceedings having been televised. In this case, the Court indicated that freedom of the press must not interfere with absolute fairness in the judicial process.

The most recent and important Supreme Court response in this area came in its decision on *Sheppard v. Maxwell,* 384 U.S. 333 (1966). Here newsmen reporting before an arrest was made and during his murder trial actually tried the defendant in the press and found him guilty. The sensationalism and circus-like atmosphere created by the press caused the Supreme Court to reverse the murder conviction in this case. The Court's decision was based on the failure of the trial judge to protect the defendant from overwhelming publicity which made it impossible for him to receive a fair trial and because of extreme disruptions in the trial that were caused by the press.

The press plays a most important role in a free society. It is the means by which the public may be kept informed. It is the means by which government corruption may be exposed. Yet some control must be exerted when the press, as in the Sheppard case, becomes more interested in spectacular news-selling headlines than in telling the truth. Some checks on the free press are therefore also essential.

What must be achieved is a careful balance between the press' freedom and an individual's right to a trial in the courtroom, rather than in the press.

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Information

Students will be given an opportunity to investigate this topic for an extended period through group and individual investigations which will go beyond the classroom settings. Basic questions arising from this area of study are as follows:

1. Can a person accused of a spectacular act of violence or an unusual crime receive a fair trial?

2. Does the right of the public to know about the circumstances of cases make it possible to receive a fair trial?

3. Is it possible to find jurors with open minds after newspapers and television have given large amounts of pre-trail coverage, (e.g. Watergate)?

The teacher should distribute to the students as needed the case studies on Sam Sheppard, Richard Speck, and Charles Lindbergh. Each case should be discussed using the following questions:

- what are the facts in each case?
- what are the issues?
- what is the conflict and how can it be resolved fairly?

Day 1

To establish a foundation on the question of fair trial v. free press it is recommended that the teacher procure the film, "Sam Sheppard." The film will vividly show the circus-like atmosphere that took place during Dr. Sam Sheppard's murder trial in Cleveland. Stop the film for discussion at the point where it shows Sheppard in prison. Use the "fish bowl" technique as explained in the section on teaching methods. The following questions may be used as a guide for discussion.

What do you think?

1. Do you think Sheppard had legitimate grounds for an appeal? Why or why not?

2. Should the press be controlled in reporting criminal trials? Why? What kinds of controls would you impose?

3. What dangers might arise if the press is restricted in its coverage of a criminal trial?

4. Is the cost of the retrial of an accused worth the excesses in the reporting of a criminal trial?

5. Would you agree with the American Bar Association that there should be restrictions on the press in covering such trials? Would you agree with the American Newspaper Publishers Association that self-discipline and discretion can best eliminate such excesses and that the public's right to know will be jeopardized if the ABA code is adopted?

Day 2

Have the students read the Lindbergh case. Discussion should first center on this particular case and then be extended to comparing it with the Sheppard case.

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Day 3

Introduce the various field activities that students will undertake (see pages 53 - 54 for recommendations). The students should be divided into teams and the division of labor, work, and reporting schedule be established. (Please keep in mind that, if you have the problem of getting students out for this activity during school time, this will replace giving students readings or a research paper for evening work). Two days of field work can be scheduled for teams that explore other topics prior to the appropriate time of discussion (e.g., team on police may desire to work before or after consideration in classroom of police activity).

Day 4

If students are allowed to use school time for field work, this would be an appropriate time for the first day of projects.

Day 5

In order to establish an understanding of the role of the police and the attitudes of young people towards police, it is suggested that the simulation game *Police Patrol*, developed by the Constitutional Rights Foundation, be used. It would be useful to have a member of the local police force present as suggested by the game.

Recently, "law and order" has become a catchphrase representing the discontent felt by many Americans toward the rise of crime, court limitations on police power, minority group protests, and the disrespect of authority exhibited especially by youth. While some may dismiss "law and order" as a poorly disguised plot to justify more police repression of dissent, there can be no doubt that the fears and concerns of those who respond to the "law and order" issue are real.

Many policemen and other adults believe that the vast majority of young people today are anti-police and hostile to adult authority in general. Although research indicates that negative youth attitudes toward the police are not as widespread as is generally assumed, there is no question that, certainly, a sizeable minority of youth harbor feelings of suspicion, fear, and overt hatred toward police authorities. In some cases these hostile feelings might be based on personal experiences in which police conduct was unnecessarily violent, unprofessional, or even illegal. Some of this hostility and distrust, however, might also be the result of young people failing to recognize or understand what the law is, what the policeman's duty is, and what pressures and fears the policeman himself experiences daily in his life.

The overall purpose of this unit is to present to students a realistic view of the job of the policeman, and to effect a change in attitudes among those young people who do not really know what it is like to be a policeman in America today.

What then can be expected of the schools and of teachers with regard to the role of law enforcement in contemporary society? Since most teachers at some time discuss the police problem with students, it is their responsibility to become thoroughly familiar with the police function in their communities.

Too often, teachers have idealistic notions of police procedures based on their middle-class backgrounds. Often, teachers only help exacerbate and reinforce students negativism toward law enforcement. It becomes the primary obligation of teachers to become informed themselves, familiar with the police agencies in the community, capable of finding answers to questions they may not be equipped to answer.

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... Also important is the need for all institutions connected with the administration of justice to become actively involved in the process of providing realistic and accurate information on the administration of justice in American society.

No institution is perfect. As with all human activity, police procedures are a mixed bag of positive and negative forces directed at society's most difficult task: providing law and order with justice.

Police Patrol[5] can be played in a group of from twenty to thirty-five students.

This activity has been designed to provide students and adults with an opportunity to experience some of the situations which are a common part of the policeman's job. Research has shown that most citizens believe police spend much of their time "fighting crime," when in fact many other tasks must be performed as well. The incidents in this game have been carefully selected from a common cross-section of police patrol activity.

A major objective of this game is to provide students and adults with an opportunity to compare their attitudes toward, and experiences with, the police. It is not the intention of the game to teach either law or correct procedure but rather to provide a vehicle for the discussion of the role of law enforcement in our society. Since the debate over the need for "law and order" has become so divisive, it is important to provide students and adults with the opportunity for discussion in the hope that honest conversation and a broader understanding of the work policemen do can contribute to improving the relationship between young people and the police in American society.

Police Patrol, by Todd Clark, of the Constitutional Rights Foundation, is published by SIMILE II. Teachers are encouraged to use the simulation game within the classroom as supplementary material to this curriculum manual. The complete game can be purchased from SIMILE II, 1150 Silverado, LaJolla, California 92037.

Day 6

Debriefing of Police Patrol should be done with the students using the survey form of student-adult attitudes toward police.

Day 7

Have a panel, comprising members of the Public Defender's Office and Prosecutor's Office, discuss the role of the courts and their respective offices. With the panelists, examine some of the following areas in the judicial process:

a. plea bargaining
b. rights of the accused
c. advisory motive of proceedings
d. public attitude toward the courts

Day 8

Invite in representatives from the prisons, jails, parole board, or probation officer for a panel discussion on alternative methods of dealing with convicted felons.

[5] Todd Clark, *Police Patrol.* SIMILE II, LaJolla, California, 1973.

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Day 9

Field work.

Day 10

Student teams will report on the judicial process.

Day 11

Class will conclude discussion on Judicial Process, Adult and Juvenile System. It is advisable to have a lawyer present to facilitate discussion and questions.

Day 12

Student teams will report on system of corrections.

Day 13

A panel of representatives of the press media should be brought in to discuss the whole question of fair trial v. free press. As an introduction to the panel, a member of the class should report to the panelists the true cases that have been studied by the class in their examination of the topic. General information should be provided regarding interviews with senior citizens who remember the Lindbergh case. This information will provide the basis and foundation for the panel in dealing with the problems that they must address.

Day 14

A panel made up of judges and lawyers should be brought in to discuss the issue; the panel should read "Fair Trial-Free Press: A Difference of Opinion," page 21, as a basis for initiating the topic.

Day 15 and 16

Mock Trial (see projects)

The following questions should be considered:

1. Do you believe the public has the right to information about a crime such as this *before* a trial has taken place? Why? Why not?

2. Do the parents and families of the victim and the accused have the right to have their privacy protected?

3. What steps should the lawyers for the accused take to insure a fair trial for their clients?

4. How does this case compare to the Sheppard and Speck cases?

5. If you had read the testimony presented at the preliminary hearing in the newspaper, could you be an impartial juror at the trial? With the three major papers featuring articles on this testimony, how difficult would it be to find an impartial jury?

6. What choices would the court have in deciding on scheduling the trial?

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FREEDOM OF PRESS

by Todd Clark

These lessons focus upon involving participants in a series of activities designed to encourage thinking on the issue of free press. They try to define and view concepts associated with free press, and to put participants into a moot court simulation where they consider the basic question of a news reporter's confidentiality of sources. (This issue has been before the Supreme Court in recent years and will continue to be raised in the future.) For this lesson, students should have as reference copies of the *Bill of Rights Newsletter* (Fall 1973, V. 7, No. 2) on "The Power of a Free Press." This activity can be extended over several class days.

1. Have each student fill out the value survey on Page 42 to help them explore their opinions. *(Newsletter,* page 4.)

2. Have students pair up to discuss their reactions to the statements. This allows all students to defend or explain their positions without having one or two people dominate the class.

3. Divide the class into 3 groups and have them run a tally on the responses, appointing someone in each group to keep a record.

Tabulation of Reactions

	SA	A	U	D	SD
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

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In the blank space in front of each item place the letter(s) that indicate the extent to which you agree with the statement.

SA	– strongly agree	A	– agree	U	– uncertain
D	– disagree	SD	– strongly disagree		

_____ 1. Newspapers and television must be free from all forms of censorship.

_____ 2. News media should not criticize our government because it encourages division in the nation.

_____ 3. Newsmen should not be required to tell anyone where their information comes from.

_____ 4. If newspapers print charges against public officials which are not true, they should be found guilty of libel and forced to pay damages.

_____ 5. Reporters should be free to investigate and report all information available about criminals such as Charles Manson. After all, the public has a right to know.

_____ 6. Photographers and television camera men should be allowed to film criminal trials, so long as they do not disrupt the proceedings.

_____ 7. All citizens, including reporters, have a responsibility to answer official questions regarding criminal activity, if they know the answers.

_____ 8. The government should be able to cancel the licenses of radio and television stations if they present slanted news about public officials.

_____ 9. High school newspapers should be approved by the faculty advisor or the principal before they are printed to be sure they do not report negative or embarrassing things about the school.

_____ 10. Freedom of the press is more important than any other freedom in a democracy.

4. In the groups, students should discuss the topics enumerated above on which there is the greatest divergence of opinion, the biggest spread between "agree" and "disagree." Have students explain their response or give their personal reactions to the way the questions are worded. Specific examples or situations which students had in mind when they reacted to the more generally worded statements can be explained.

   During the activity the teacher can "drop in" on the drift of the discussions but should in no way take part in the discussion by posing questions or directing. He or she should keep track of the progress to make sure not only that sufficient time is allotted but also that discussions are not permitted to "drag on." Ideally, the group discussion should stop while student enthusiasm and interest level are still high.

5. Teacher should call an end to discussion, mentioning that some of the prominent issues raised will now be channelled into specific case study materials. From each group pick three individuals. Together these nine students will make up the Supreme Court to hear three cases on freedom of press. The teacher should explain that as a moot court, the concern will be the interpretation of the law, i.e., what does the First Amendment mean by "freedom of press" and how does it apply to the confidentiality of newsmen's sources of information. This is different from a Mock Trial which role-plays an actual trial on the facts of a case.

6. Each of the three groups are given a particular case. The entire group reads and becomes familiar with the facts involved.

   a. *Branzburg* v. *Hayes*
   b. *Caldwell* v. *U.S.*
   c. In *re Paul Pappas (Newsletter,* pp. 22-24.)

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Branzburg v. Hayes

Paul Branzburg, a staff reporter for the Louisville (Kentucky) *Courier-Journal* wrote a story which appeared November 15, 1969, on drugs in his community. He described in detail his observations of two residents of the county synthesizing hashish from marijuana. The article contained a picture of a pair of hands working above a table on which was a substance identified as hashish.

In the article, Branzburg stated that he had promised not to reveal the identity of the two hashish makers. Soon after the story appeared in the paper, the reporter was subpoenaed by the County Grand Jury. He appeared but refused to identify the persons he had seen making the hashish.

Branzburg contended in court that his rights under the Constitution and Kentucky law allowed him to refuse to identify his sources. The Kentucky courts denied this and ruled that because he had witnessed the action, his first-hand presence differed from second-hand sources of information and therefore he could be compelled to testify.

Branzburg also was involved in a second case in another Kentucky court resulting from an article on drugs that appeared January 10, 1971. The reporter said in this article that the basis for the story was two weeks of interviews with several dozen drug users. He was subpoenaed to appear before a second Grand Jury, and he moved to quash this summons. The motion was denied, although the Court did rule that he must testify only regarding incidents which he had actually witnessed.

All other efforts by Paul Branzburg to avoid giving testimony failed in Kentucky courts, and the case was taken by him to the U.S. Supreme Court which agreed to hear the case.

Caldwell v. United States

Earl Caldwell, a reporter for the *New York Times*, assigned by his newspaper to cover the Black Panther party and other black militant groups, was subpoenaed by a federal grand jury on February 2, 1970. He was ordered to appear before the grand jury to testify and to bring with him notes and tape recordings of interviews. These interviews, given to Caldwell for publication by officers and spokesmen of the Black Panther Party, concerned the aims, purposes and activities of that organization.

Caldwell objected to the scope of the subpoena, and a second subpoena was served on March 16th which simply ordered Caldwell to appear to testify and did not require him to bring any written or taped materials.

Caldwell (called the respondent) and his employer, the *New York Times*, moved to quash (to avoid the grand jury subpoena) on the ground that the unlimited breadth of the subpoenas and the fact that Caldwell would have to appear in secret before the grand jury would destroy his working relationship with the Black Panther Party, and thus suppress vital First Amendment freedoms. Caldwell argued that such a drastic incursion of First Amendment freedoms should not be permitted when there was not a strong governmental interest involved.

The Government filed three memoranda in opposition to quash, claiming that the grand jury was investigating possible violations of a number of criminal statutes covering the crimes of threats against the President, assassination, attempts to assassinate, civil disorders, interstate travel to incite a riot, mail frauds, and swindles.

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The Government also stated that the Chief of Staff of the Black Panther Party had been indicted by the grand jury on December 3, 1969, for uttering threats against the life of the President and that various efforts had been made to secure evidence of crimes under investigation by granting immunity to persons allegedly associated with the Black Panther Party.

On April 6, the District Court denied the motion to quash on the ground that "every person within the jurisdiction of the government" must testify if he is properly summoned. The District Court, however, did accept the respondent's First Amendment arguments by issuing a protective order providing that Caldwell must divulge whatever information was given to him for publication, but that he was not required to reveal confidential sources or information received by him as a professional journalist in pursuit of a story.

The First Amendment, the Court ruled, afforded the journalist this privilege until the Government could show a "compelling and overriding national interest" in requiring Caldwell to reveal privileged information.

Shortly thereafter, the term of the grand jury expired, and a new grand jury was convened. A new subpoena was issued and served on May 22, 1970. Caldwell filed a new motion to quash. The court denied the motion and directed Caldwell to appear before the grand jury, and the court issued an order to show cause why he (Caldwell) should not be held in contempt.

Upon his further refusal to go before the grand jury, Caldwell was ordered committed for contempt until such time as he complied with the court's order or until the expiration of the term of the grand jury.

Caldwell appealed the contempt order to the U.S. Court of Appeals and finally to the U.S. Supreme Court.

In the Matter of Paul Pappas

On July 30, 1970, Paul Pappas, a television newsman-photographer, was assigned to report on civil disorders in New Bedford, Massachusetts, by the television station for which he worked.

His intention was to cover a Black Panther news conference in the boarded-up store that served as the group's headquarters. The streets around the store were barricaded, but he finally gained entrance to the area and recorded and photographed a prepared statement read by a Black Panther leader. This took place at about 3:00 p.m. Pappas then asked the group if he could return later in the evening. Permission was granted on the condition that he agree not to disclose anything he saw or heard inside the store except an anticipated police raid, which he was free to photograph and report as he wished. Pappas agreed and returned to the store headquarters at about 9:00 p.m. and remained inside the store for some three hours.

There was no police raid, and Pappas wrote no story. Nor did he in any way reveal what transpired.

Two months later, Pappas was summoned before the Bristol County Grand Jury. He answered questions as to his name, address, employment, and what he had seen and heard outside the Panther headquarters while he was there. He refused to answer any questions about what had taken place inside headquarters while he was there, claiming that the First Amendment afforded him a privilege to protect confidential informants and their information.

A second summons was then served upon him, again directing him to appear before the Grand Jury and "to give such evidence as he knows relating to any matters which may be inquired of on behalf of the commonwealth before ... the Grand Jury."

The trial judge in the Superior Court denied his motion to quash by ruling that Pappas had no constitutional privilege to refuse to divulge to the Grand Jury what he had seen and heard, including the identity of persons he had observed.

The case was reported by the Superior Court directly to the Supreme Court of Massachusetts for an interlocutory ruling (a judgment pronounced during the progress of a legal action and having only temporary force). The Supreme Court affirmed the decision of the Superior Court and denied the request to quash. However, the court did allow Pappas to appeal his case to the U.S. Supreme Court.

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7. In the court, half of each group represents Branzburg, Pappas, or Caldwell, as the case may be; the second half represents the government. Each side should be given time to draw up the best and most compelling arguments they can think of to support their position (this can be done in class or for homework). The teacher should assign sides or have them picked randomly so that students do not necessarily end up arguing in favor of the position they agree with initially (the point here is to role-play in order to illustrate issues of law).

   Each of the six sub-groups should agree among themselves on the strongest arguments to be made and even on the strategy or logical order of the presentation. One person is picked as a spokesman for each side. He or she should be someone able to stand up best under Court questioning (or else students should decide that questions will be handled by another attorney on the team). Notes should be taken in each group.

8. Supreme Court members withdraw to study background material on all three cases and to review instructions on the organization of and procedures to be followed in a Moot Court. Appoint one of the Justices as Chief Justice.

   Again, while activities in No. 7 and No. 8 are taking place, the teacher can drop in on the groups only to listen to the discussion. His or her only role should be to clarify any questions regarding instructions on how to proceed. Encourage the students, as the time grows short, to summarize discussion and write down the key points.

9. Call the small group discussions to a halt and have students rearrange their seating so that the various attorney teams face the front of the room where the nine Supreme Court Justices will sit.

10. The actual Moot Court hearing is conducted as follows. Each team presents its oral arguments following this sequence:

    Paul Branzburg, plaintiff
    John P. Hayes, Judge, defendant
    United States, plaintiff
    Earl Caldwell, defendant
    Paul Pappas, plaintiff
    Massachusetts, defendant.

    During or after each team's arguments, the members of the Court can and should question the attorneys closely so that their arguments may be clarified.

11. After all arguments have been presented and questioning has taken place, the Court Justices form a circle to discuss the arguments. The attorneys are free to sit around the outside and listen, but they cannot interrupt or in any way participate in deliberations. The Chief Justice should preside over the discussions.

12. Each case should be voted on by the Justices, with decisions made by majority vote. The Chief Justice should preside over the voting procedure.

13. The Court should then announce its decision(s) to the class of attorneys, after which the class may engage in further discussion.

14. The class should conclude by having the students read the actual text of the Court decision of June 29, 1972, which dealt with all three cases in a single ruling. (Page 26 of the *Newsletter* includes excerpts from majority, concurring, and dissenting opinions.)

Confidentiality and the Supreme Court: The Branzburg, Pappas and Caldwell Decisions

The three cases were decided by a single decision handed down June 29, 1972. The majority opinion written by Justice Byron White held that "the sole issue before us is the obligation of reporters to respond to grand jury subpoenas as other citizens do and to answer questions relevant to an investigation into the commission of a crime ... The claim is, however, that reporters are exempt from these obligations because if forced to respond to subpoenas and identify their sources or disclose other confidences, their informants will refuse or be reluctant to furnish newsworthy information in the future ... On the records now before us, we perceive no basis for holding that the public interest in law enforcement and in insuring effective grand jury proceedings is insufficient to override the consequential, but uncertain, burden on news-gathering which is said to result from insisting that reporters, like other citizens, respond to relevant questions put to them in the course of a valid grand jury investigation or criminal charge.

... Only where news sources themselves are implicated in crime or possess information relevant to the grand jury's task need they or the reporter be concerned about grand jury subpoenas.

... We cannot seriously entertain the notion that the First Amendment protects a newsman's agreement to conceal the criminal conduct of his source, or evidence thereof, on the theory that it is better to write about crime than to do something about it. ...

... Official harassment of the press undertaken not for the purposes of law enforcement but to disrupt a reporter's relationship with his news sources would have no justification."

In his concurring opinion, Justice Lewis Powell, Jr., stated: "The striking of a proper balance between freedom and the obligation of all citizens to give relevant testimony with respect to criminal conduct ... on a case-by-case basis accords with the tried and traditional way of adjudicating such questions."

Justice Potter Stewart in writing his dissenting opinion concludes that: "The reporter's constitutional right to a confidential relationship with his source stems from the broad societal interest in a full and free flow of information to the public...

A corollary of the right to publish must be the right to gather news (which) implies, in turn, a right to a confidential relationship between a reporter and his source.

... when governmental officials possess an unchecked power to compel newsmen to disclose information received in confidence, sources will clearly be deterred from publishing it because uncertainty about exercise of the power will lead to 'self-censorship'. ...

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The long-standing rule making every person's evidence available to the grand jury is not absolute. The rule has been limited by the Fifth Amendment (no person shall be compelled to be a witness against himself), the Fourth Amendment (the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures ...), and the evidentiary privileges of the common law...."

In opposing the opinion of the majority, Justice William O. Douglas' dissent allowed: "It is my view that there is no 'compelling need' that can be shown which qualifies the reporter's immunity from appearing or testifying before a grand jury, unless the reporter himself is implicated in a crime. His immunity in my view is therefore quite complete, for absent his involvement in a crime, the First Amendment protects him against an appearance before a grand jury, and if he is involved in a crime, the Fifth Amendment stands as a barrier."

Students should compare the arguments of the Supreme Court Justice with their own in the Moot Court hearing.

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STUDENT PROJECTS

1. Students should be given an opportunity to intern in justice agencies in order to develop fact sheets on crime, the courts, and procedures for correction in their state through interviews with Justice Agency personnel. One page listing information on these topics should be developed for students to use as background for panels and discussions with police, lawyers, and correction personnel. The teacher should duplicate and distribute them to all members of the class.

2. Research the coverage given the Lindbergh kidnapping in a nearby daily newspaper in 1933 (trial of accused 1935). Photograph on slide film the most interesting headlines to use in report. Contrast *New York Times, New Jersey Press,* and national periodicals coverage of this event.

3. Tape record interviews with individuals in community who remember the Lindbergh Case. Prepare questions which probe their attitudes on the newspaper coverage of the case.

4. Develop a Mock Trial on a sensational murder case involving widespread coverage. Students will have to design some newspaper articles and headlines as well as basic information on witnesses involved. You might want to have students check with State Bar Association for an actual case in the State. This would provide factual information on witnesses and actual press coverage. For example: in New Jersey there is the Dr. Carl Coppolino trial involving the murder of his wife; California's 4-year-old Joyce Ann Huff was shotgunned to death.

   In role-playing the court trial, the following roles should be assigned.

   - Judge
   - Court officer or bailiff
   - The prosecutor or plaintiff's counsel
   - The plaintiff or victim
   - The defendant
   - The defense counsel
   - Witnesses
   - Jury
   - Court reporter (You may wish to request that a tape recorder be available for the court reporter to use in recording the proceedings).

The following procedures for conducting a court trial have been simplified for use with students and you may choose to make modifications.

- **Opening of the Court.** The court officer or bailiff calls the court to order. "Hear ye, hear ye, the Court is now open and in session. The Honorable Judge_____presiding. All persons having business before the court come to order. The case of_____. Are all persons connected with this case present and prepared? Are your witnesses present? Let the record show that all parties in the case of_____are present and prepared."

- **Selection of the Jury.** After the court has been called to order, a jury is selected. (You may wish to include more than 12 students as jury members in order to broaden student participation in the proceeding).

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- **Opening Instructions by the Judge.**

- **Opening Statements by Attorneys.** Attorneys for both the prosecution (or plaintiff) and defense make 3-5 minute opening statements to the judge, first the prosecutor or counsel for the plaintiff, then the counsel for the defense. Opening statements should include arguments and evidence to support these arguments.

- **Direct Examination and Cross-Examination of the Victim or Plaintiff and His Witnesses.** The victim or plaintiff is examined first by the prosecutor or his own counsel and then by the counsel for the plaintiff. Each witness is sworn in by the court officer or bailiff as he takes the stand.

- **Direct Examination and Cross-Examination of the Defendant and His Witnesses.** The defendant is examined first by his own counsel and then by the prosecutor or counsel for the plaintiff. Each witness is sworn in by the court officer as he takes the stand. (You may wish to limit examination and cross-examination of witnesses to thirty minutes.)

- **Closing Statements by Attorneys.** After the period of examination and cross-examination of witnesses, the prosecutor or counsel for the plaintiff and then the counsel for the defendant give closing arguments, during which time both sides summarize their cases and attempt to convince the jury to make a decision in behalf of their client or position.

- **Instructions to the Jury.** The judge instructs the jury on the relevant laws (or policies created by students) and directs them to retire and decide upon a verdict.

- **The Verdict.** The judge receives the verdict of the jury.

5. Research, interview, and report on other agencies in the justice system, e.g., Civil Rights Division, Legal Aid, Community Service Agencies, Probation and Parole, etc.

6. Interview Public Defenders, Prosecutors, and Judges on Fair Trial/Free Press. Discuss implications of current press coverage practices as they relate to the right to fair trial. (To be done by interns in appropriate agencies).

7. Prepare simulations on legal processes: mock trial, parole board hearings, etc.

8. Develop a survey instrument to be used to discover public attitudes toward police, lawyers, courts, and justice in the State.

9. Interview juvenile specialists from police, public defender, prosecutor, courts, and probation/parole. Report on similarities and deficiencies between juvenile and adult system.

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LEGAL GLOSSARY

LEGAL GLOSSARY [6]

accomplice. One who knowingly, voluntarily, and with a common interest with others participates in the commission of a crime as a principal, accessory, or aider and abettor.

So far as his criminal liability is concerned, the question is whether he participated as a principal or as an accessory, aider or abettor; the term "accomplice" has no legal significance in deciding the question of his own guilt. Such term becomes significant if he is called as a witness and testifies upon the trial of another person and it is contended that, since he is an accomplice, his testimony is insufficient to support a conviction. 21 Am J2d Crim L §118; 26 Am J 1st Homi §458.

acquittal. A verdict of not guilty of a crime as charged; a setting free from the charge of an offense.

amicus curiae. A "friend of the court," one who volunteers information to a court on a case in which he has no right to appear as a party but in which he has been allowed to introduce arguments, often to protect his own interests.

apparent jeopardy. The status of the defendant in a criminal case on trial before a competent court and a jury impaneled and sworn.

appeal. The review by a higher court of a trial held in a lower court on the complaint that an error has been committed.

appellate court. A court having the power to hear appeals, review the decisions of lower courts, and reverse lower court decisions when they are in error.

arraignment. The act of bringing an accused before a court to answer the charge made against him by indictment, information, or complaint. It consists of bringing the accused into court, reading the charge to him then and there, and then calling upon him to plead thereto as "guilty" or "not guilty."

arrest. The seizing, detaining, or taking into custody of a person by an officer of the law.

attorney at law. One of a class of persons who are by license constituted officers of courts of justice, and who are empowered to appear and prosecute and defend, and on whom peculiar duties, responsibilities and liabilities are devolted in consequence. 7 Am J2d Attys § 1. A quasi-judicial officer. 7 Am J2d Attys § 3.

Of course, the of an attorney is not confined to appearances in court for prosecutions and defenses. A person acting professionally in legal formalities, negotiations, or proceedings, by the warranty or authority of his clients is an attorney at law within the usual meaning of the term. The distinction between attorneys or solicitors and counsel or barristers is practically abolished in nearly all the states. 7 Am J2d Attys § 1. While some men of the profession devote their time and talents to the trial of cases and others appear in court only rarely, the law imposes the same requirements for admission and the same standards of ethics for both classes.

attorney's implied authority. The authority which an attorney has, by virtue of his employment as an attorney, to do all acts necessary and proper to the regular and orderly conduct of the case; being such acts as affect the remedy only and not the cause of action. Such acts of the attorney are binding on his client, though done without consulting him. 7 Am J2d Attys § 120.

An attorney employed to conduct a transaction not involving an appearance in court also has a measure of implied authority, although not in the broad scope accorded that of a counsel in litigation. For example an attorney employed to collect a claim has no implied authority to accept anything except lawful money in payment. Anno.: 66 ALR 116, s. 30 ALR2d 949, § 5.

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[6] Compiled in part from James A. Ballentine, *Ballentine's Law Dictionary*, (Rochester, New York: The Lawyers Co-Operative Publishing Company, 1969).

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attorney's privilege or immunity. The immunity or privilege of an attorney at law against being subjected to arrest or the service of process in a civil action while going to the place of trial of an action in which he appears in his professional capacity, during the trial, and while returning to his office or residence. 42 Am J1st Proc § 140.

bail. The cash or bond security given for a defendant's future appearance in court, thereby releasing the defendant from custody until his hearing or trial.

booking. A police-station term for the entry of an arrest and the charge for which the arrest was made.

breach of the peace. An unlawful violation of the public peace and order by disorderly conduct.

bribery. The crime of offering, giving, or accepting anything of value to influence the behavior of a public official in the performance of his public duty.

brief. A written argument prepared by a lawyer to serve as the basis of his argument before a court.

burden of proof. The responsibility for producing enough evidence to prove the facts in a lawsuit.

burglary. The breaking and unlawful entering of a dwelling (or other structure) belonging to another with the intent to commit a felony therein; also includes attempted forcible entry.

capital crime. A criminal offense for which the maximum penalty is death.

certiorari. A writ, or order, from an appellate court to a lower court requesting for review a record of the proceedings of a trial.

change of venue. A change in the place where a trial will be held.

civil law. One of two broad fields of law, involving legal disputes between private individuals.

common law. The body of legal principles based on precedents set by court decisions rather than on statutes passed by legislatures.

concurring opinion. An opinion filed by an appeals judge or a justice of the Supreme Court, agreeing with other opinions in the case but giving differing reasons for so concurring.

confession. A voluntary admission, declaration or acknowledgment by one who has committed, a felony or a misdemeanor that he committed the crime or offense or participated in its commission; a voluntary admission or declaration of one's agency or participation in a crime. 29 Am J2d Ev § 523.

A confession is voluntary when made of the free will and accord of the accused, without fear or threat of harm and without hope or promise of benefit, reward, or immunity. 29 Am J2d Ev § 529.

conviction. A verdict of guilty in a criminal case.

criminal homicide. The unlawful taking by one human being of the life of another in such a manner that he dies within a year and a day from the time of the giving of the mortal wound. If committed with malice, express or implied by law, it is murder; if without malice, it is manslaughter. No personal injury, however grave, which does not destroy life, will constitute either of these crimes. The injury must continue to affect the body of the victim until his death. If it ceases to operate, and death ensues from another cause, no murder or manslaughter has been committed. Commonwealth v. Macloon, 101 Mass. 1.

criminal law. One of two broad fields of law, involving legal action taken by the state against a person accused of committing a crime or offense against society.

cross-examination. In a legal proceeding, the close questioning of one party's witness, by an attorney for the opposite side, to test the truth of the testimony he has given.

de facto. In fact; in deed; actually so, but not sanctioned by law.

defendant. The accused in a criminal case or, in a civil suit, the party sued by the plaintiff.

de jure. According to law; by right; by lawful title.

dismissal. An order for a termination of a case without a trial, freeing the defendant without a verdict.

dissenting opinion. A court opinion delivered by one or more judges or justices, disagreeing with both the ruling and the reasoning of the majority opinion.

double jeopardy. Twice subjecting an accused person to the danger inherent in a trial for a criminal offense. (Citizens are protected under the Fifth Amendment against being tried twice for the same crime.)

due process of law. All the proper steps required for a fair hearing in a legal proceeding, guaranteed in the United States by the "Bill of Rights" and the Fourteenth Amendment to the Constitution.

equal protection of the laws. The constitutional requirement, guaranteed by the Fourteenth Amendment, that all persons in like circumstances are entitled to equal treatment by the law and, especially, in legal proceedings.

evidence. Any of the various types of information – including testimony, documents, and physical objects – that a court allows a lawyer to introduce in a legal proceeding in order to attempt to convince the court or jury of the truth of his client's contentions.

exoneration. Absolving of a charge or imputation of guilt; the lifting of a burden; a discharge; a release from liability; the application of the personal property of an intestate to the payment of his debts and the relief of his real property therefrom. 21 Am J2d Ex & Ad § 391.

ex parte. In law, a term used to describe a legal proceeding undertaken for or on behalf of one side only.

felony. A generic term for any of several high crimes such as murder, rape, robbery, for the purpose of distinguishing them from less serious crimes (called misdemeanors); offenses punishable by death or imprisonment in a state prison or penitentiary.

grand jury. A jury of inquiry called to hear the government make charges and present evidence in criminal cases to determine if a trial should be held. When the evidence warrants, the grand jury makes an indictment.

habeas corpus. A writ, or court order, requiring that a prisoner be brought before a judge to determine whether he is being held legally.

immunity. The protection given a witness against criminal prosecution in return for information.

indictment. A formal, written accusation of a crime drawn up by a grand jury after hearing the facts of a case.

information. A formal charge of the crime made by a law officer, usually the prosecuting attorney. He presents enough evidence against the accused to show that a trial should take place.

injunction. A writ, or court order, forbidding the defendant to do a threatened harmful act or directing him to stop such an act already in progress.

inquest. A judicial inquiry, usually held before a jury, to determine an issue of fact. One type of inquest is a coroner's inquest, an inquiry into the causes and circumstances of any death that occurs violently, suddenly, or suspiciously.

in re. "In the matter of" or "concerning," a term used to entitle a legal case or proceeding in which two parties do not oppose each other, or in which one person begins an action on his own behalf.

instructions to the jury. The advice or direction that the judge gives the jury on the law applicable to the case under consideration.

interlocutory ruling. A judgment or decree pronounced during the progress of a legal action and having only temporary or provisional force.

judicial review. The power or authority of the U.S. Supreme Court to interpret the Constitution, by reviewing and ruling on the constitutionality of orders issued by the President and of legislation passed by Congress and the states.

jurisdiction. The right to exercise authority in a given matter, such as the right of a court to hear and give judgment on a kind of legal action.

justices. Judges, judicial officials. The U.S. Supreme Court is composed of nine justices – the Chief Justice and eight Associate Justices.

justiciable. Proper for examination in and subject to the action of a court of justice.

larceny. The felonious stealing, theft, leading or riding away of personal property from the possession of another.

libelous per se. Written or printed words of such kind that when applied to a person they will necessarily cause injury to him in his personal, social, official, or business relations of life, so that legal injury may be presumed or implied from the bare fact of publication. 33 Am J1st L & S § 5. Written or printed words so obviously hurtful to the person aggrieved by them that no explanation of their meaning and no proof of their injurious character is required in order to make them actionable. Jerald v. Huston, 120 Kan 3, 242 P 472.

mandamus. A writ issued by a court ordering an official to carry out a specified official duty.

martial law. Overriding rule by state or military forces imposed upon a civilian population in time of war or critical public emergency when normal civil authority has failed to function.

misdemeanor. An offense, less serious than a felony, for which the punishment may be a fine or imprisonment in a local rather than a state institution.

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nonjusticiable. Not proper for examination in nor subject to the action of a court of justice.

original jurisdiction. In law, the authority of a court to be the first to hear and decide certain kinds of cases.

overrule. To set aside; to reject. A judicial decision may be overruled by a later judgment on the same legal question – either by the same court or by a superior court. The later decision, not the earlier one, is then followed as a precedent.

parole. The release of a prisoner or detainee before his term has expired on condition of continued good behavior (post-incarceration).

perjury. The willful giving of false testimony while under oath in a judicial proceeding.

petit jury (trial jury). A group of citizens, usually twelve in number, selected by law and sworn to investigate certain questions of fact and to return a truthful verdict based on the evidence presented.

plaintiff. The party who initiates an action, or lawsuit, against another, who then becomes the defendant.

police powers. The general power, or authority, of state governments to protect the health, safety, morals, and welfare of their people. This power is based on the powers reserved to the states under the Tenth Amendment. To some extent, the federal government has evolved similar general powers, based on the Commerce Clause as well as on the Preamble to the U.S. Constitution.

prima facie. Legally valid and sufficient to establish a case unless disproved.

precedent. A judicial decision that may be used as a guide in deciding similar cases in the future.

probable cause. Reasonable ground to believe that a crime has been or will be committed, justifying the government's action in searching or arresting a suspect.

probable cause for a prosecution. A reasonable ground for suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious, or as some courts put it, a prudent man, in believing that the party charged is guilty of the offense with which he is charged. The existence of such facts and circumstances would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged is guilty of the offense for which he is prosecuted. Such facts and circumstances, as, when communicated to the generality of men of ordinary and impartial minds, are sufficient to raise in them a belief of real, grave suspicion of the guilt of the person charged. 34 Am J1st Mal Pros § 47.

probable cause for arrest. A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty. In substance, a reasonable ground for belief in guilt. Brinegar v. United States, 338 US 160, 93 L Ed 1879, 69 S Ct 1302, reh den 338 US 839, 94 L Ed 513, 70 S Ct 31.

probable cause for issuance of a search warrant. A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a prudent and cautious man in the belief that the person accused is guilty of the offense with which he is charged. 47 Am J1st Search § 22.

probation. A suspended sentence for a minor crime in which the person convicted can go free – provided his behavior remains good. Normally, he is placed under the supervision of a probation officer. (pre-incarceration).

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prosecuting attorney. The lawyer who conducts the government's case against a person accused of a crime. He is often called the district attorney or the state's attorney.

public defender. An attorney-at-law appointed to aid a person accused of crime or taken into custody as delinquent who cannot afford a lawyer, acting as counsel to the same degree as if he/she had been retained by the accused person in the case.

quash. To put an end to, set aside, or make void, especially by judicial action (such as to quash a subpoena or an indictment).

recidivism. The relapse into crime and return to prison of one who has been previously convicted and punished for a crime.

robbery. The felonious taking of money or goods of value from the person of another or in his presence, against his will, by force or by putting him in fear.

search and seizure. Means for the detection and punishment of crime; the search for and taking custody of property unlawfully obtained or unlawfully held, such as stolen goods, property forfeited for violation of the law, and property the use or possession of which is prohibited by law, and the discovery and taking into legal custody of books, papers, and other things constituting or containing evidence of crime.

search warrant. A form of criminal process which may be invoked only in furtherance of a public prosecution. An order in writing, in the name of the people, the state, or the commonwealth, according to the local practice, signed by a magistrate, and directed to a peace officer, commanding him to search for personal property and bring it before a magistrate. 47 Am J1st Search § 3. An examination or inspection, by authority of law, of one's premises or person, with a view to the discovery of stolen, contraband, or illicit property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which he is charged. 47 Am J1st Search § 4.

self-incrimination. Testimony or other evidence given by a person, which tends to expose him to prosecution for a crime.

sentence. In criminal proceedings, the formal judgment in which a judge states the penalty or punishment for a defendant who has been convicted of a crime.

stare decisis. The doctrine under which courts decide cases on the basis of precedents – rules established in previous similar cases.

subpoena. A writ commanding a person designated in it to appear in court for testifying as a witness, or to produce in court certain designated documents or other evidence.

trial by jury. A trial in which the jurors are the judges of the facts and the court is the judge of the law.

verdict. The formal decision of a jury regarding the facts of a legal case submitted to it at a trial.

waiver. The voluntary surrender of one's legal rights.

warrant. An order issued by a judge or other authority, directing a law officer to carry out an action, such as an arrest or a search.

writ. A written order from a court, commanding or prohibiting a specified act.

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BIBLIOGRAPHY

SUGGESTED READINGS

1. Bradbury, Ray. *Fahrenheit 451.* Ballentine Books, Inc., New York, 1972.
   Speculative fiction about a society where reading is forbidden. Useful to promote discussion on individual freedom and freedom of the press.

2. Curriculum Innovations, Inc. *The Pentagon Papers and Freedom of the Press: A Case Study.*
   Summaries of articles and viewpoints on the freedom of press versus national security, including Supreme Court ruling.

3. Fixx, James F. (ed.). *The Mass Media and Politics.* Arno Press, Inc., New York, 1971.
   Covers the role of press and television in a democracy.

4. Haiman, Franklin S. *The First Freedoms: Speech, Press, Assembly.* American Civil Liberties Union, New York, undated.
   Survey of judicial decisions affecting freedom of speech, assembly, and the press.

5. Levy, Leonard William. *Legacy of Suppression: Freedom of Speech and Press in Early American History.*
   Harvard University Press, Cambridge, Massachusetts, 1960.
   A historical study of the origins of the constitutional guarantees of freedom of expression.

6. Lofton, John. *Justice and the Press.* Beacon Press, Boston, Massachusetts, 1966.
   Suggests under what circumstances and in what ways the individual right to due process should take precedence over the public's right to know and, conversely, when the right to know should be given priority.

7. Medina, Harold R. (ed.). *Freedom of the Press and Fair Trial.* Columbia University Press, Irvington-on-Hudson, New York, 1967.
   A committee of the New York Bar Association examines the problem and suggests some possible solutions.

8. North Carolina News Media. *The News Media and the Courts.* 2nd ed.; North Carolina News Media — Administration of Justice Council, University of North Carolina, Chapel Hill, North Carolina, 1972.
   A brief guide to one state's court system: structure, organization, functions, and procedures. Includes essay on freedom of press and right to a fair trial.

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AUDIO/VISUALS

1. *Free Press Versus Fair Trial: The Sheppard Case.* Encyclopaedia Britannica, (color film).
   Presents the case of a man convicted of his wife's murder, but because of enormous publicity surrounding the trial, later ordered retried and acquitted.

2. *Freedom of the Press – Today.* Guidance Associates, (color film).
   Examines freedom of the press in the light of government control, military censorship, and a recent Supreme Court decision.

3. *The Fight for Our Rights.* Warren Schloat Productions. (color film).
   Documents the changing interpretations applied to eight of the freedoms covered by constitutional amendments: press, religion, assembly, speech, bear arms, counsel.

4. *Mightier Than the Sword: Zenger and Freedom of the Press.* Teaching Film Custodians.
   (b & w, 23 minutes).
   Describes the famous case which established the principle that publishing the truth is not libel.

5. *Fair Trial.* filmstrip/cassette. Xerox Education Publications.
   Depicts the origin and evolution of our legal heritage.

6. *Free Speech and Press* filmstrip/cassette. Xerox Education Publications.
   Depicts the value conflict inherent in basic concepts of free speech and Press.

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